



**EIGHTEENTH REPORT**

**STANDING COMMITTEE ON SOCIAL JUSTICE AND  
EMPOWERMENT  
(2011-2012)**

**(FIFTEENTH LOK SABHA)**

**MINISTRY OF TRIBAL AFFAIRS**

**Action taken by the Government on the observations/recommendations contained in the Tenth Report of the Standing Committee on Social Justice and Empowerment (Fifteenth Lok Sabha) on the subject "Implementation of Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 – rules made there under" pertaining to the Ministry of Tribal Affairs.**

**Presented to Lok Sabha on 22.12.2011**

**Laid in Rajya Sabha on 22.12.2011**



**LOK SABHA SECRETARIAT  
NEW DELHI  
December, 2011/Agrahayana, 1933 (Saka)**

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**COMPOSITION OF THE STANDING COMMITTEE ON SOCIAL JUSTICE AND  
EMPOWERMENT (2011-2012)**

**SHRI DARA SINGH CHAUHAN - CHAIRMAN**

**MEMBERS  
LOK SABHA**

2. Shri Kameshwar Baitha
3. Smt. Susmita Bauri
4. Shri Devidhan Besra
5. Smt. Rama Devi
6. Shri Premchand Guddu
7. Dr. Manda Jagannath
8. Shri Mohan Jena
9. Shri Dinesh Kashyap
10. Shri G.V. Harsha Kumar
11. Shri H.D. Kumaraswamy
12. Shri Basori Singh Masram
13. Shri R. Dhruva Narayana
14. Shri Ramashankar Rajbhar
15. Shri Pradeep Kumar Singh
16. Shri Lalit Mohan Suklabaidya
17. Shri Kabir Suman
18. Smt. Usha Verma
19. Vacant
20. Vacant
21. Vacant

**MEMBERS  
RAJYA SABHA**

22. Smt. Jharna Das Baidya
23. Shri Avtar Singh Karimpuri
24. Shri Narayan Singh Kesari
25. Shri Mahmood A. Madani
26. Shri Ahmad Saeed Malihabadi
- \*27. Dr. Ram Dayal Munda
28. Shri Baishnab Parida
29. Shri Praveen Rashtrapal
30. Shri Shivpratap Singh
31. Shri Nandi Yelliah

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\* Dr. Ram Dayal Munda was expired on 30.9.2011.

## LOK SABHA SECRETARIAT

- |    |                   |   |                 |
|----|-------------------|---|-----------------|
| 1. | Shri Deepak Mahna | - | Joint Secretary |
| 2. | Smt. Anita Jain   | - | Director        |

## **INTRODUCTION**

I, the Chairman of the Standing Committee on Social Justice and Empowerment having been authorized by the Committee to submit the Report on their behalf, present this Eighteenth Report on the action taken by the Government on the observations/recommendations contained in the Tenth Report of the Standing Committee on Social Justice and Empowerment (Fifteenth Lok Sabha) on the subject "Implementation of Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 – rules made there under" pertaining to the Ministry of Tribal Affairs.

2. The Tenth Report was presented to Lok Sabha and laid in Rajya Sabha on 16<sup>th</sup> November, 2010. The Ministry of Tribal Affairs furnished their replies indicating action taken on the recommendations contained in that Report on 17.3.2011. The Report was considered and adopted by the Standing Committee on Social Justice and Empowerment at their sitting held on 20.12.2011.

3. An analysis of the action taken by Government on the recommendations contained in the Tenth Report of the Standing Committee on Social Justice and Empowerment (Fifteenth Lok Sabha) is given in **Appendix**.

4. For facility of reference observations/recommendations of the Committee have been printed in thick type in the body of the Report.

5. The Committee place on record their appreciation for the valuable assistance rendered to them by the officials of the Lok Sabha Secretariat attached to the Committee.

**NEW DELHI:**  
**20 December, 2011**  
**29 Agrahayana, 1933 (Saka)**

**DARA SINGH CHAUHAN**  
**Chairman,**  
**Standing Committee on**  
**Social Justice and Empowerment**

## CHAPTER I

### REPORT

1.1 This Report of the Standing Committee on Social Justice and Empowerment deals with the action taken by the Government on the observations/recommendations contained in the Tenth Report of the Standing Committee on Social Justice and Empowerment (Fifteenth Lok Sabha) on the subject "Implementation of Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 – rules made there-under" relating to Ministry of Tribal Affairs.

1.2 The Tenth Report was presented to Lok Sabha and was laid in Rajya Sabha on 16<sup>th</sup> November, 2010. It contained 23 recommendations. Replies of Government in respect of all the recommendations have been received and are categorized as under :

- (i) Observations/Recommendations, which have been accepted by the Government :

Paragraph Nos. 1.9, 1.43, 1.44, 1.74, 1.75, 1.76, 1.77, 1.79, 1.80, 1.97, 1.99 and 1.104.

(Total 12 – Chapter II)

- (ii) Observations/Recommendations which the committee do not desire to pursue in view of the replies of the Government :

Paragraph No. 1.47.

(Total 1 – Chapter III)

- (iii) Observations/Recommendations, in respect of which replies of the Government have not been accepted and have been commented upon by the Committee in Chapter I :

Paragraph Nos. 1.45, 1.46, 1.81 and 1.83.

(Total 4 – Chapter IV)

- (iv) Observations/Recommendations in respect of which replies of the Government are interim in nature :

Paragraph Nos. 1.41, 1.42, 1.78, 1.82, 1.96 and 1.103

(Total 6 – Chapter V)

**1.3 The Committee desire that action taken notes on the recommendations contained in Chapter-I and final action taken notes in respect of the**

**recommendations contained in Chapter-V of this Report may be furnished to them at the earliest and in any case not later than three months of the presentation of the Report.**

1.4 The committee will now deal with some of the replies received from the Government which need reiteration or merit comments.

**Recommendation (Sl. No. 6, Para No. 1.45)**

1.5 The Committee were constrained to note that out of a total number of 28,49,000 claims received from 17 States as many as 12,67,928 claims has been rejected after initial verification and scrutiny. The Committee also observed that the Ministry did not have the information as to at which level i. e., Gram Sabha, Sub-Divisional level or District level the rejections were more. The Ministry had maintained that many people had mistaken the Act as a land distribution drive and had applied in a large number which was the main cause for rejection of these applications. On the rejection of genuine claims under the Act though the Ministry had maintained that adequate safeguards were in- built in the procedure itself and there was little scope for rejection of genuine claims, the Committee were apprehensive that large number of rejections might had occurred due to procedural reasons where genuine claims of genuine beneficiaries might had been overlooked and rejected on ground of not fulfilling the requirements in the claim procedure such as non-filling of the claim forms properly, non-furnishing of relevant documents etc. Large scale rejections at the Gram Sabha level only where the Gram Sabha takes a decision in an improper way without further hearing of the case at next levels of Committees is totally against the spirit of the Act.. The Committee, therefore, recommended the Ministry to instruct the States to review the rejected cases on their merit so that any genuine claimant was not debarred from recognition of his rights. The Committee desired that a sample survey of the rejected claims should also be undertaken at once to ascertain the specific causes for rejections at such a large scale



which would enable the Ministry to streamline the procedure and make it transparent as far as possible.

1.6 The Ministry in their action taken reply have stated as under :-

"As earlier intimated to the Standing Committee, the Ministry have written to the State Governments, vide Secretary (TA)'s letter dated 15<sup>th</sup> July 2010, to initiate action, on a statistically acceptable sampling basis, at the level of Gram Sabha and Sub-Divisional Level Committees for categorizing all rejections, with their numbers, in different categories, like (a) non-availability of written records; (b) non-availability of other criteria specified in Rule 13; (c) non-possession of forest land; (d) non-occupation of the sate relevant to the Act; (e) doubtful tribal status etc. and to include this information in the monthly progress report being sent to this Ministry. The Ministry have conveyed the apprehensions of the Standing Committee about the large number of rejections and requested the State Governments to expedite the action, as suggested in the Secretary (TA)'s letter dated 15<sup>th</sup> July 2010, to ascertain the specific causes for rejections at such a large scale and apprise this Ministry of the out-come. As regards the review of the rejected cases, it may be stated that as per the Act and the Rules framed there-under, the claims filed are adjudicated at three levels, namely, the Gram Sabha, Sub-Divisional Level Committee and finally by the District Level Committee. The decision of the District Level Committee on the record of the forest rights is final and binding. There are provisions for filing petitions by an aggrieved party before the SDLC & DLC. The Act does not contain any provision for review of the claims rejected by the District Level Committee".

**1.7 Keeping in view large scale rejection of claims received, the Committee had expressed their concern that genuine claims of genuine beneficiaries might have been overlooked and recommended that the Ministry should instruct the States to review the rejected cases on their merit and also undertake an exercise of sample survey of the rejected claims. The Committee have been informed that the Ministry have written to State Governments on 15.7.2010 to initiate action on a statistically acceptable sampling basis at the level of Gram Sabha and Sub-Divisional Level Committees for categorizing all rejections their numbers such as non-availability of land record, non-possession of forest land and doubtful tribal status etc. and to include the information in their monthly progress Report. However, the Committee are dismayed to see that the Ministry in their action taken**

reply, have not mentioned anything about the outcome of the feedback from the States and what course of action have been taken by the Ministry to tackle the issue of large scale rejections. The Committee feel that if the Ministry takes suitable remedial action on the basis of the feedback received from States, large scale rejections can be avoided, the process of distribution of titles can be streamlined and improvement can be made in many States where the progress of distribution of title deeds has been slow. Therefore, the Committee recommend that the Ministry, over and above impressing upon the States to send the monthly report on a regular basis by including the information on specific causes for rejection, should also take necessary action for improvement in the procedure with more coordination between the Revenue, Tribal and Forest Departments on the basis of the feedback received so that there is transparency and pick up in the title distribution process. The Committee may be apprised of the action taken on the feedback from the States within three months of presentation of this Report.

#### **Recommendation (Sl. No. 7, Para No. 1.46)**

1.8 The Committee were pained to note that though the Act was notified in the year 2007 and three years had since elapsed the implementation of the Act was still far from satisfactory. Hon'ble President of India had emphasized the need to ensure the distribution of all title deeds to all eligible claimants by end of December, 2009 and though nearly a year has passed since the above direction of the Hon'ble President, the process of distribution of titles was not completed even 50 percent. The Ministry's plea that the Act does not prescribe any time limit for recognition and vesting of forest rights and hence a target date for completion of distribution of title deeds cannot be fixed was not acceptable to the Committee since in the opinion of the Committee the success of

implementation of the Act is absolutely dependent on working within a time schedule. Also, the Committee were of the opinion that when the Act had come into force, at the initial stage the Ministry did not have any idea as to how many claims would actually be filed and title deeds to be distributed. However, having completed three years in the implementation process, the Ministry now had a fair idea about the magnitude of number of claims which had to be processed and cleared. Therefore, the Committee recommended the Ministry to fix achievable targets with timeline and chalk out clear-cut and definite strategy for completion of different stages of implementation such as constitution of committees, processing of claims, declaration of Critical Wild Life Habitats, planning for developmental initiatives etc. and put forth the same before the States to achieve. In this effort, the Ministry in-stead of simply maintaining the data on States' progress on paper, the progress on the ground/field should also be reviewed and corrective steps be taken to remove the deficiencies in the States. The Committee may be apprised of the steps taken in this direction within three months of presentation of the Report.

1.9 The Ministry in their action taken reply have stated as under :-

"The Ministry has been emphasizing on the State/UT Governments from time to time for speedy and time-bound implementation of the provisions of the Act and dovetailing all development and welfare programmes for bringing about socio-economic development and livelihood security of all the beneficiaries under the Act. Though the Act does not prescribe any time limit for recognition and vesting of forest rights, the Hon'ble Minister of Tribal Affairs had addressed the State Chief Ministers on 31<sup>st</sup> August 2010 and again on 10<sup>th</sup> November 2010 for ensuring disposal of all the pending claims expeditiously and distribution of title deeds to the eligible claimants. States have again been directed to fix achievable targets with timeline and chalk out a clear cut and definite strategy for completion of different stages of implementation, such as, constitution of committees, processing of claims, declaration of Critical Wild Life Habitats, planning for developmental initiatives etc. They have also been advised to review the progress on the ground/field and take corrective steps to remove the deficiencies. While reviewing the progress during their visit to the States the officers also discuss and address the related issues".

**1.10 Having observed the extreme slow progress in recognition of titles even after Hon'ble President's direction emphasizing that the process should be**

completed by end of December, 2009, the Committee had recommended the Ministry to work within a time schedule, fix achievable targets with timelines, chalk out clear cut and definite strategy and put the same before the States for completion of different stages of implementation of the Act such as constitution of Committees, processing of claims, planning for developmental initiatives etc. The Committee had asked the Ministry to apprise them of the progress made by the States/UTs after fixation of such deadlines. The Committee are, however, distressed to note that apart from merely directing the States/UTs to fix achievable targets with timeline for completion of different stages of implementation the Ministry have not taken any positive steps on their own to improve the situation. The Committee feel that unless the Ministry/Central Government chalks out a strategy with achievable targets and timelines and assists the States to work towards achieving these with fixed time lines, there will be no progress on the ground in states/UTs where the title distribution has been nil or insignificant. Therefore, the Committee recommend the Ministry to fix achievable deadlines for States/UTs for completion of different stages of title recognition process, direct and assist them to achieve those targets for completion of title distribution process within a fixed time frame. Steps taken in this direction may be apprised to the Committee within three months of presentation of the Report.

**Recommendation (Sl. No. 16, Para No. 1.81)**

1.11 On the declaration of Critical Wild Life Habitats, National Parks and Sanctuaries under Section 2 (b) of the Act, the Committee observed that as on date not a single Critical Wild Life Habitat has been declared. On this issue while the Ministry of Tribal Affairs had tried to put the onus on the Ministry of Environment and Forests by saying that it was they who had to take a decision on the matter, the Ministry of Environment and Forests had tried to justify the delay by saying that the scientific/expert Committees

required for the purpose had not yet been constituted in all the States and the whole thing was a time consuming process. While expressing their dissatisfaction on the inordinate delay in declaring the protected area or Critical Wild Life Habitats, the Committee were of the view that in the absence of clear demarcation of areas protected for wild life habitats, undue advantage/leverage was given to the Forest Department for forceful eviction and harassment of the tribes in the name of protected areas/Critical Wild Life Habitats. Since the Act clearly provided that no eviction and re-location of villagers from protected areas should be allowed to take place till the completion of the process of Forest Rights Committees formation, receipt and verification of claims and recognition of rights, the Committee recommended the Ministry to act swiftly in the matter, put a time frame for the States and direct the States to identify and list out the protected areas within that time frame. The Ministry should also co-ordinate with the Ministry of Environment and Forests for an early decision on the declaration of Critical Wild Life Habitats preferably within a period of six months.

1.12 The Ministry in their action taken reply have stated as under :-

"The Ministry has conveyed the observations/recommendations of the Standing Committee to the Ministry of Environment & Forests on 2<sup>nd</sup> February, 2011 which is primarily responsible for determination and notification of critical wildlife habitats in the National Parks and Sanctuaries under Section 2(b) of the Act, for taking action on priority basis. The Ministry has also communicated the recommendations of the Standing Committee to the State/UT Governments, inviting their attention to the clarification given by the Ministry that the rights of the forest dwelling Scheduled Tribes and other traditional forest dwellers occupying forest land in the National Parks and Sanctuaries have to be recognized first under the Act before undertaking any exercise for resettlement and that no eviction and resettlement is permissible till all the formalities are completed. Their attention has also been invited to the instructions issued by the Ministry of Environment & Forests, vide their letter dated 21<sup>st</sup> June 2010, addressed to the Principal Chief Conservators of Forests, Department of Forests of all States/UTs, to the effect that before taking any decision on displacement of Scheduled Tribes from the National Parks and Sanctuaries, the provisions of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 should be duly complied with. The State Governments have been requested to ensure that the provisions of the Act are followed in letter and spirit in this regard and the critical wildlife habitats are determined and notified at the earliest".

**1.13 The Committee are dismayed to note that in spite of their insistence on early declaration of critical wildlife habitats in National Parks and sanctuaries under provision of Section 2(b) of the Act, there has been no progress with regard to declaration of these protected areas. While the Ministry of Tribal Affairs have tried to fix the responsibility for determination and notification of critical wildlife habitats in National Parks and sanctuaries on the Ministry of Environment and Forest, the Committee feel that since the declaration of protected areas is in the interest of the tribals, the Ministry of Tribal Affairs should come forward and take up the matter with the Ministry of Environment and Forests for early declaration of wild life habitats so that there is no displacement of Scheduled Tribes from forest areas endangering their lives and habitat. The Committee, therefore, reiterate their earlier recommendation and advise the Ministry to constantly co-ordinate with Ministry of Environment and Forests on the issue and impress upon them the urgency of the matter so that protected areas are declared and notified at the earliest. The Ministry of Tribal Affairs should also keep a vigil over harassment of innocent tribes in the name of protected zone and intervene wherever necessary so that tribal people are not displaced and harassed unnecessarily. Stringent action should be initiated on officials who harass the tribal population in these zones.**

**Recommendation (Sl. No 18, Para No. 1.83)**

1.14 The Committee had noted that Minor Forest Produce is central to the existence of tribal communities and the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 is an important milestone which recognizes the ownership rights of these people of Minor Forest Produce for the purpose of access, processing and trade. After the enactment of the Act, the Right of Scheduled Tribes and Other Traditional Forest Dwellers to procure and process Minor Forest produce has now

become an indispensable part of the Act and accordingly the Ministry should have redoubled their efforts in ensuring the protection of this primary right of the Scheduled Tribes and Other Traditional Forest Dwellers. The Committee were, however, distressed to note that in addition to the existing efforts which are grossly inadequate, the Ministry had hardly taken any additional initiatives/steps in the area of Minor Forest Produce in the aftermath of the enactment of the Act. The Committee were of the view that the existing potential of Minor Forest Produce needs to be exploited economically and scientifically so that they continue to remain as a sustainable and renewable source of income/livelihood for the tribal families; more so after the enactment of the Act, the Ministry have become morally obligated and duty bound to ensure that this is done more effectively so that benefits accrue to the needy tribals. The Committee, therefore, recommended the Ministry should pursue with the States to prepare specific action plans under the above Act for harnessing the existing potential in their respective States in a scientific manner, providing technical assistance for value addition to Minor Forest Produce and undertaking procurement activities with improved and up-to-date methods. The Committee further desired that the Ministry should take concrete steps in the direction of creating facilities in the form of Cooperative Societies in States where maximum number of title deeds have been distributed so that the tribal people in these States get assistance/support relating to procurement and marketing of their Minor Forest Produce for which they have been given rights under the Act.

1.15 The Ministry in their action taken reply have stated as under :-

"The Ministry agrees with the observations of the Standing Committee that the Minor Forest Produce (MFP) is central to the existence of the tribal communities and the existing potential of MFP needs to be exploited economically so that they continue to remain as a sustainable and renewable source of income/livelihood for the tribal families. The Ministry has, therefore, been emphasizing on the State/UT Governments, from time to time, the need for taking steps for inviting more community rights claims and vesting more title deeds on such claims. The Ministry has brought the observations of the Standing Committee to the notice of

the State/UT Governments on 8<sup>th</sup> February, 2011 and they have been advised to prepare specific action plans for (i) harnessing the existing potential of MFP in their respective States in a scientific manner, (ii) providing technical assistance for value addition to Minor Forest Produce, and (iii) undertaking procurement activities with improved and up-to-date methods so that the benefits accrue to the needy tribals. The States where maximum number of title deeds has been distributed have been requested to undertake concrete steps for creating facilities in the form of Cooperative Societies so that the title holders get assistance/support relating to procurement and marketing of their Minor Forest Produce".

**1.16 On the ownership rights of the tribal people with regard to minor forest produce, the Committee had recommended the Ministry to work with States and prepare specific action plans for harnessing the potentials of minor forest produce. The Committee are, however, disturbed to note that the Ministry have not taken any concrete action in this regard. The Committee feel that merely advising the States to prepare action plans for harnessing the potentials of minor forest produce, its scientific procurement and marketing without giving them proper direction and ways and means to work on the above would not suffice as States on their own would not be motivated to do anything in the field/area of minor forest produce unless there are clear instructions and directions in this regard from the Centre. The procurement and harnessing of Minor Forests Produce (MFPs) is an important right recognized under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forests Rights) Act, 2006 and several States/UTs have dense forests with unique MFPs which needs Governmental intervention as far as scientific procurement and their harnessing is concerned. The Committee also recommend that the States should be guided to form co-operative societies for procuring and marketing of Minor Forest Produce (MFP) in the lines of those already existing in some States like Andhra Pradesh etc. Therefore, the Committee reiterate their earlier recommendation and recommend that the Ministry in coordination with the States should prepare**



**specific action plans keeping in mind the State specific conditions for better harnessing, procurement and marketing of minor forest produce and implement these so as to benefit the tribals whose rights have been recognized under the Act.**

## CHAPTER – II

### OBSERVATIONS/RECOMMENDATIONS WHICH HAVE BEEN ACCEPTED BY THE GOVERNMENT

#### Recommendation (Sl. No. 1, Para No. 1.9)

2.1 The Committee are happy to note that after a long time an all encompassing Act i.e. the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 has been enacted to give recognition to the rights of the Scheduled Tribes and other Traditional Forest Dwellers whose rights could not be recognized for generations. With the enactment of the Act, the long felt needs and aspirations of these groups of people have been fulfilled. The Committee are given to understand that the Act, while making conservation of forests more effective and transparent, aims at providing tenurial security and legislative protection to the rights of the Scheduled Tribes and other Traditional Forest Dwellers. The Act with its multiple dimensions also aims at addressing several issues affecting these people. The Committee strongly feel that the Act, if implemented in letter and spirit, will go a long way in redressing the historical injustice meted out to the Scheduled Tribes and other Traditional Forest Dwellers. The Committee, therefore, recommend that the Ministry of Tribal Affairs being the nodal Ministry should accord topmost priority to implementation of the Act in the most effective manner. Concerted efforts, in close coordination with State Governments, should be made to implement every aspect/provision of the Act so as to achieve the objectives enshrined in Act and bring relief to the Scheduled Tribes and other Traditional Forest Dwellers. The momentum gathered around the Act should not be allowed to wither, the pace of its implementation expedited and no laxity in implementation of the Act either on the part of Central Government or the State Governments should be allowed. For this the Committee recommend the Ministry to take proactive steps by coordinating the

activities of other Departments such as Environment and Forests, Revenue Departments, Panchayati Raj and Local Bodies apart from involving various Governmental Organizations and NGOs as well as People's Representatives.

### **Reply of the Government**

2.2 The Ministry is according topmost priority to the implementation of every aspect/provision of the Act so as to achieve the objectives enshrined in Act. With this very objective in mind, the Ministry has issued a number of instructions to the State/UT Governments, during the past one year, covering the aspects relating to (i) categorization of all rejections to find out the reasons for rejection of claims at the Gram Sabha and Sub-Divisional level; (ii) launching a special campaign for generating wide-spread awareness about community rights if necessary by retraining field level functionaries engaged in processing of such applications and instructing the Gram Sabhas to facilitate the collection of more community right claims; (iii) providing the Gram Sabhas with all necessary assistance by the authorities in the State in the discharge of its functions; (iv) providing the Gram Sabhas and the Sub-Divisional Level Committees with the assistance of facilitators for their capacity building; (v) facilitating collection and processing of the claims of members of the PTGs or pre-agricultural communities; (vi) convening of the meetings of the State Level Monitoring Committees (SLMCs) regularly to take stock of field level problems; (vii) communication of the resolutions of the Gram Sabha/ decision of the SDLC to the claimant within 60 days from the date of resolution/decision and also the rejection of the claim by the DLC to enable him to seek redressal as provided in the Act; (viii) taking action for formal recording of the rights following the settlement rules prescribed to each State; (ix) just processing, and not re-examining, the recommendations of the Gram Sabha for settling rights over minor forest produce (both individual and community), for quick acceptance; (x) recognition of the

rights in the National Parks and Sanctuaries without waiting for determination and notification of 'critical wildlife habitats' in these areas under Section 2(b) of the Act and ensuring that the provisions of the Act are duly complied with before any decision on displacement of Scheduled Tribes from the National Parks and Sanctuaries is taken; (xi) formulation of a strategy for implementation of the Act in a time bound manner and ensuring that title deeds are distributed to all the eligible claimants without delay; (xii) dovetailing of the development and welfare programmes for the uplift of potential title holders; (xiii) ensuring that the prescribed guidelines and procedure, including the time lines, are strictly followed while processing the cases for diversion of forest land under Section 3(2) of the Act, and so on. The Ministry is thus making concerted efforts and taking all necessary steps to ensure that the implementation of the Act is expedited. The Ministry has also been involving the other Departments, such as Environment & Forests, Panchayati Raj etc. in the implementation process, wherever considered necessary.

[Ministry of Tribal Affairs O.M. No. 23011/45/2009-SG-II (FRA) (Vol. II) dated 14.03.2011]

#### **Recommendation (Sl. No. 4, Para No. 1.43)**

2.3 The Committee observe that though 'individual rights' under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 have been recognized in large number, the recognition of 'community rights' have been minimal under the Act. The Committee also observes that not even a single claim under community rights has been received in many States such as Tamil Nadu, Maharashtra, Uttar Pradesh and Uttarakhand. In other States where the claims have been received under the category of 'community rights' these are not in sufficient number. The Committee are of the view that the Act is not solely about individual land claims and many of the rights under the Act such as right to Minor Forest Produce, grazing and rights of nomadic people are to be exercised as a community. Since the most powerful sections/clauses of the Act concern community's right to manage, protect and conserve

forests – the first step towards a genuinely democratic system of forest management, the Central and State Governments should make every effort to recognize the ‘community rights’. Therefore, the Committee recommend the Ministry not to reject the community claims on insufficient grounds, expeditiously process all the pending community claims, and take necessary steps for conferment of more number *pattas* to communities who have filed the claims.

### **Reply of the Government**

2.4 Recognizing the importance of ‘community rights’, the Ministry had already issued instructions to the State Governments vide Secretary (TA)’s letter dated 20<sup>th</sup> July 2010, to launch a special campaign for generating wide-spread awareness about the community rights, if necessary, by re-training field level functionaries engaged in the processing of such applications. The State Governments were also advised to enlist the support of local resource institutions under the State Government for this purpose. The observations of the Standing Committee have again been conveyed to the State/UT Governments on 8<sup>th</sup> February, 2011 with the request to take necessary steps under the Act and the Rules for inviting more claims for community rights and their expeditious disposal. They have also been requested to take steps for expeditious processing and disposal of all the pending community claims.

[Ministry of Tribal Affairs O.M. No. 23011/45/2009-SG-II (FRA) (Vol. II) dated 14.03.2011]

### **Recommendation (Sl. No. 5, Para No. 1.44)**

2.5 The Committee note that there is a ‘75 years/three generations’ stipulation kept in the Forest Rights Act as an eligibility criteria for the Other Traditional Forest Dwellers. However, many tribals who are living in and are dependent on the forest land for their livelihood are being deprived of applying for title deeds/*pattas* due to the above criteria since it is extremely difficult on their part to produce documentary evidence/proof of their existence for three consecutive generations. The Committee also observe that a lot of

governmental institutions will have to be involved for ascertaining the veracity of 'three generations' of existence of these people. As such, there are potential beneficiaries who are left out of the recognition of the rights process. Therefore, in order to do justice to these people and provide the rights due to them the Committee recommend the Ministry to co-ordinate with all concerned agencies, take adequate steps in facilitating their claims and extend all kinds of assistance needed so that rights of these people are recognized in a smooth and hassle-free manner bringing minimum trouble to them.

### **Reply of the Government**

2.6 As per the Forest Rights Act, 2006, the eligibility criteria of at-least three generations (75 years) residence prior to the 13<sup>th</sup> day of December 2005 and dependence of the forest or forests land for *bonafide* livelihood needs, prescribed in Section 2 (o) of the Act, is required to be fulfilled by 'other traditional forest dwellers' only. This criterion is not applicable to the forest dwelling Scheduled Tribes and they are not required to produce evidence/proof of their residence for three generations prior to the 13<sup>th</sup> day of December 2005 for their eligibility for recognition and vesting of forest rights under the Act. The Ministry has given instructions to the State Governments, vide Secretary (TA)'s letter dated 20<sup>th</sup> July 2010, to provide the Gram Sabhas with the assistance of facilitators in order to (a) overcome the difficulties experienced by the claimants in accessing the requisite evidence in support of their claims; (b) avoid the delays in preparation of a map delineating the area of each recommended claim; (c) facilitate claims, especially those of PTGs; (d) enhance capacity building of the Forest Rights Committees constituted by the Gram Sabha for assisting the Gram Sabhas etc. The States have also been advised that, as in the case of Gram Sabha, the Sub-Divisional Level Committees may also be provided with the assistance of facilitators for due discharge of functions assigned to them.

**Recommendation (Sl. No. 9, Para No. 1.74)**

2.7 The Committee observe that as on date only 13 States have established the prescribed structure and procedure for implementation of the Act. Similarly the formation/constitution of Sub Divisional Level Committees (SDLCs), District Level Committees (DLCs) and State Level Monitoring Committees (SLMCs) are not complete in all the States. Many States also don't have the Forest Rights Committees resulting in non-implementation of the Act in these States. Since the constitution of requisite Committees is the first step towards implementation of the Act and without these, the implementation process of the Act cannot inch/move forward, the Committee recommend the Ministry to impress upon all the States to constitute the Sub Divisional Level Committees (SDLCs), District Level Committees (DLCs) and State Level Monitoring Committees (SLMCs) as well as the Forest Rights Committees wherever these have not yet been constituted. The Committee also recommend the Ministry to prepare a comprehensive plan for skill capacity development of the Gram Sabhas, Forest Rights Committees and the SDLCs, DLCs and SLMCs within a time frame so that these function most efficiently. Skill development and capacity building of the implementation agencies connected with implementation of the Act should be enhanced on a repeated and continuous basis.

**Reply of the Government**

2.8 As per the information collected by the Ministry from the States/UTs, till 31<sup>st</sup> January 2011, only the States of Goa, Manipur and Meghalaya have not yet constituted the prescribed Committees under the Act, namely, the Sub-Divisional Level Committees (SDLCs), District Level Committees (DLCs) and State Level Monitoring Committees (SLMCs). The UT Administration of Andaman & Nicobar Islands has constituted the SDLCs and DLCs but is yet to constitute the SLMC. The Ministry has conveyed the

observations of the Standing Committee to the State Governments of Goa, Manipur and Meghalaya and the UT Administration of Andaman & Nicobar Islands to take steps for constituting the prescribed Committees immediately and initiate the process of the implementation of the Act thereafter.

As regards skill capacity development of the Gram Sabhas, Forest Rights Committees, SDLCs, DLCs and SLMCs, as already indicated in the reply to recommendation at SL. NO. 5 Para 1.44 above, the Ministry has already given instructions to the State Governments, vide Secretary (TA)'s letter dated 20<sup>th</sup> July 2010, to provide the Gram Sabhas with the assistance of facilitators in order to (a) overcome the difficulties experienced by the claimants in accessing the requisite evidence in support of their claims; (b) avoid the delays in preparation of a map delineating the area of each recommended claim; (c) facilitate claims, especially those of PTGs; (d) enhance capacity building of the Forest Rights Committees constituted by the Gram Sabha for assisting the Gram Sabhas etc. The States have also been advised that, as in the case of Gram Sabha, the Sub-Divisional Level Committees may also be provided with the assistance of facilitators for due discharge of functions assigned to them. The Ministry has also conveyed the observations of the Standing Committee to the State/UT Governments and they have been advised to prepare a comprehensive plan, on priority basis, for skill capacity development of the Gram Sabhas, Forest Rights Committees and the SDLCs, DLCs and SLMCs within a time frame. They have also been requested to repeat and continue this process periodically.

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### **Recommendation (Sl. No. 10, Para No. 1.75)**

2.9 The Committee note that the States of Manipur, Sikkim and Daman & Diu have not appointed any nodal officers to look into the issues relating to implementation of the



Act. As per the Ministry's submission because of the peculiar situation of holding of ownership of forest land and ancestral land in the State of Manipur and Scheduled Tribes already holding revenue land in their own name in the State of Sikkim, the Act does not seem to be of much importance and relevance in these two States. However, the Committee are of the view that in the present circumstances though the implementation of the Act seems to be irrelevant and not much of importance in these States, the existence and pre-eminence of the tribal groups in all these States essentially require the appointment of nodal officers to look after the issues relating to their living in forest areas. The nodal officers may be assigned the responsibility of mitigating and addressing issues concerning the settlement and livelihood needs of these people in future also in case these arise. Therefore, the Committee recommend the Ministry to direct the above State Governments/UT Administrations to appoint their respective nodal officer during the ongoing process of implementation of the Act only, so that there is an authority at place to address the present as well as future concerns/needs of the tribal people in the domain of the Act in these States/UTs.

### **Reply of the Government**

2.10 The observations of the Standing Committee have been conveyed to the State Governments of Manipur and Sikkim on 8<sup>th</sup> February, 2011 and they have been directed to appoint their respective nodal officers who may be assigned the responsibility of mitigating and addressing issues concerning the settlement and livelihood needs of tribal groups in these States in the domain of the Act in these States. As regards Daman & Diu, it may be stated that the UT Administration of Daman & Diu has since appointed a nodal officer for implementation of the Act in the Union Territory.

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### **Recommendation (Sl. No. 11, Para No. 1.76)**

2.11 The Committee observe that while implementing the Act many States are facing problems *viz* relating to land records, un-surveyed forest land, non-availability of detailed maps/records, inadequate manpower & funds and forest areas being affected by left wing extremism, etc. The Committee are also given to understand that for capacity building of Gram Sabhas and Forest Rights Committees, the State Governments as per the provision under Rule 4 & 6 of the Act, may provide the assistance of facilitators, the expenses of which can be made out of Grants under Article 275 (1). However, the Committee observe that while some States such as Andhra Pradesh, Orissa have made good use of the above provision to avail the facilities of facilitator, many states are still ignorant of the provisions and hence lagging behind due to the above problems in their States. States are also not able to use the advanced technologies such as GPS for survey of the forest areas because of resource/funds constraints due to which the progress of implementation of the Act in many States has been tardy and not so phenomenal. Therefore, the Committee recommend the Government to urgently identify the States where the implementation has been affected due to above problems/constraints and persuade these States to come forward and take the benefits of funds under Article 275 (1) for implementing the Act in their States.

### **Reply of the Government**

2.12 The Ministry, vide Secretary (TA)'s letter dated 20<sup>th</sup> July 2010, has already requested the State Governments for providing all necessary assistance to Gram Sabhas by the authorities in the States and for providing the Gram Sabhas with the assistance of facilitators in order to avoid the delays in preparation of a map delineating the area of each recommended claim. The State Governments have also been informed that the Ministry is providing funds to the State Governments under Article 275(1) of the Constitution to the extent of 10% of their total allocation for activities involving

implementation of the Act. The States which are lagging behind in implementation of the Act due to problems relating to land records, un-surveyed forest land, non-availability of detailed maps/records, inadequate manpower & funds and forest areas being affected by left wing extremism, etc. have been advised to take the benefit of funds under Article 275(1) for implementing the Act in their States.

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**Recommendation (Sl. No. 12, Para No. 1.77)**

2.13 On the mis-utilization of the Act where vested interests/non-tribal people claiming and getting the rights and the harassment of the tribal people, though the Ministry have maintained that no such case has come to their notice, the Committee during their on-the-spot study visit to some States found many beneficiaries complaining about harassment by the forest officials. The Committee are also aware of deliberate attempts being made in many States by the vested interests to influence the decisions at Gram Sabhas and Committees constituted under the Act and cases of non-tribal people swallowing all the benefits in the name of tribals. Considering the fact that the main target group of the Act are the innocent native tribes who are naïve and prone to be easily harassed, the Committee strongly feel that such an Act needs to be strictly protected from misuse by vested interests and Mafias and the influence of Forest Department. Therefore, to avoid any kind of misuse of the Act, efforts should be made to deal with the vested interests with tough hands and keep them out of the recognition process. Counter verification have to be made by field officials as far as possible to ensure that title deeds/*pattas* are conferred only to genuine beneficiaries. Strict punitive action may also be taken against the people/ forest officials who are found to be flouting with the provisions of the Act and also harassing the innocent tribals.

**Reply of the Government**

2.14 The Ministry has brought the above observations of the Standing Committee to the notice of all the State/UT Governments on 8<sup>th</sup> February, 2011 and they have been advised to take all necessary steps to ensure that (a) there is no mis-utilization of the Act by the vested interests/ineligible persons; (b) there is no harassment of tribal people and the ineligible people claiming and getting the rights in the name of tribal people; (c) the vested interests are dealt with tough hands and kept out of the recognition process; (d) the title deeds/*pattas* are conferred only to genuine beneficiaries, and (e) strict punitive action is taken against the people/ officials who are found to be flouting with the provisions of the Act and harassing the tribal people.

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**Recommendation (Sl. No. 14, Para No. 1.79)**

2.15 The Committee observe that the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 envisages convergence of welfare and developmental initiatives where all the development and welfare programmes of other Ministries have to be coordinated and synergized so as to achieve planned development for tribal areas. However, the Committee are constrained to note that even after Prime Minister's direction emphasizing the need for such a synergy/coordinated approach and the establishment of the Task Force by the Ministry of Rural Development for convergence of programmes concerning Education, Health and Agriculture sectors with MGNREGA, coordination among the Ministries/Departments pertaining to tribal development programmes is hardly forthcoming/happening as Ministries/Departments continue to work in total isolation to each other resulting in detachment of tribal pockets from developmental mainstream. The Committee are of the strong view that the present Act has been brought in with the specific purpose of elevating the livelihood of the Scheduled Tribes and Other Traditional Forest Dwellers who have been neglected and underprivileged for years. In order to do justice to this provision and achieve this crucial

objective enshrined in the Act, the Committee recommend the ministry to make special provisions/steps for developmental initiatives in the tribal areas in the fields of education, health, basic infrastructure and also keep a close watch on the working of other Ministries by formulating an action plan for achieving convergence of welfare and developmental initiatives. For this, the Committee also direct the Ministry of Tribal Affairs to immediately put in place a national level coordinating Committee with top officials of all concerned Ministries as members who should meet at regular intervals to review the progress/status of various schemes on areas outlined above and identify critical gaps in developmental initiatives for taking suitable remedial actions.

### **Reply of the Government**

2.16 The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 seeks to recognise and vest the forest rights and occupation in forest land in forest dwelling Scheduled Tribes and other traditional forest dwellers who have been residing in such forests for generations but whose rights could not be recorded. In addition to various social sectors and infrastructure development programmes/schemes being implemented by various sectoral Ministries, which also cover/benefit tribal areas/people, the Ministry of Tribal Affairs implements various Central Sector/Centrally Sponsored schemes/programmes for the socio-economic development of the tribal people in the country. The schemes of the Ministry relate to income and employment generation infrastructure development, education development and improvement in literacy of tribal people, besides the promotions of voluntary effort in the area of tribal welfare. These schemes are implemented through the State/UT Governments which are required to ensure that the benefits of the schemes reach the target groups/areas.

As regards the suggestion of the Standing Committee for putting in place a National Level Coordination Committee with top officials of all concerned Ministries as

members for reviewing the progress/status of various schemes having a bearing on development of tribal areas, it may be mentioned that the Ministry has recently, on 3<sup>rd</sup> September 2010, constituted a National Council for Tribal Welfare, headed by the Hon'ble Prime Minister and comprising the Ministers of Tribal Affairs, Finance, Agriculture, Home Affairs, Health and Family Welfare, Environment & Forests, Human Resources Development, Women and Child Development, Culture, Mines, Coal, Power, Deputy Chairperson, Planning Commission and Chief Ministers of Fifth and Sixth Schedule States as members. The mandate of the National Council is to (i) provide broad policy guidelines to bring about improvement in the lives of the Scheduled Tribes community in the country, (ii) review the implementation of the Forest Rights Act, (iii) review the implementation of Fifth Schedule and Sixth Schedule of the constitution, (iv) monitor the implementation of Tribal Sub-Plan, and (v) monitor programmes aimed at protecting Particularly Vulnerable Tribal Groups. In addition to the above Council, the Ministry has constituted a Standing Committee for Tribal Welfare also, headed by the Hon'ble Minister of Tribal Affairs and having the Ministers of Tribal Affairs of the Fifth and Sixth Schedule States, Finance Secretary, Home Secretary, Secretaries of Ministries of, Environment & Forests, Agriculture, Human Resource Development, Rural Development, Health & Family Welfare, Women and Child Development, Culture, Member-Secretary, Planning Commission etc. as its members, to deliberate on the issues mentioned above and recommend the agenda for discussion at the National Council for Tribal Welfare. The Standing Committee for Tribal Welfare held its first meeting on 12<sup>th</sup> January 2011 and, among other agenda items, discussed the issue relating to 'Implementation of Forest Rights Act, 2006' in the various states.

The Ministry is quite alive to the concerns expressed by the Standing Committee and is taking all necessary steps to ensure that there is all-round socio-economic development of the tribal areas.

**Recommendation (Sl. No. 15, Para No. 1.80)**

2.17 The Committee observe that under Section 3(2) of the Act relating to provision of the diversion of the forest land for developmental activities/facilities such as schools, dispensaries, hospitals, roads, community centres and minor irrigation canals etc. though the procedure has been issued on 18.5.2009, neither the Ministry of Tribal Affairs nor the Ministry of Environment and Forests have received any information from the State Governments and there are no details of such diversion available with both these Ministries. The Committee, however, during their study visit to the States of Karnataka and Andhra Pradesh in June, 2010 interacted with many beneficiaries who complained the Committee about the authorities not allowing/permitting the diversion of land for these activities. The Committee further observed that the key functionaries responsible for implementation of the Act were not even aware of the provision/procedure for diversion of land due to lack of information passed on to them and the inadequate publicity of the Act. Therefore, the Committee strongly feel that the functionaries responsible for implementation need to be informed and made aware of the provision and advised to strictly follow the procedure laid down for diversion of land so that the tribal people who face re-location elsewhere due to such diversion are adequately compensated and rehabilitated and also their rights in the new forest areas respected and recognized under the Act.

**Reply of the Government**

2.18 The Ministry has conveyed the observations of the Standing Committee to all the State/UT Governments on 8<sup>th</sup> February, 2011. The State/UT Governments have, therefore, being advised to take all necessary steps to ensure that the functionaries responsible for implementation are informed and made aware of the above provisions of Section 3(2) of the Act relating to diversion of forest land for developmental

activities/facilities such as schools, dispensaries, hospitals, roads, community centres and minor irrigation canals etc. and that they should strictly follow the procedure laid down on 18<sup>th</sup> May 2009 for this purpose.

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**Recommendation (SI. No. 20, Para No. 1.97)**

2.19 On the issue of monitoring of the Act, though the Ministry have maintained that monitoring of the implementation of the Act is being ensured by review meetings with the States and visit to States/UTs by high level officials, the Committee observe that these are not quite sufficient as is evident from the slow progress of the Act in many States. Therefore, the Committee, apart from advising the Ministry to insist all the States to strictly send their status of implementation every fortnight, should make the field visit of its officials to the low performing pockets more frequent with visible outcomes. The Ministry should think in the line of placing a standing monitoring cell for thorough and meticulous monitoring of the implementation of the Act at every stage which may review and monitor the progress of implementation of the Act and advise follow up actions to the Ministry. The Committee are also of the view that with the kind of staff the Ministry have at their disposal at present it is practically impossible to monitor the Act. Therefore, the Ministry should evolve a mechanism wherein they take the help of Officers from the State Governments to implement the Act. Apart from ensuring the translation of the Act in all regional languages and making available to States all information on the Act including Circulars, Letters, Guidelines, Orders, Memoranda of instruction concerning the Act in the form of a compounded volume, more and more training programmes, workshops and awareness campaigns should be conducted at various levels by involving all the stake holders. In this effort, besides ensuring participation of NGOs and involvement of social activists, the Ministry should direct the States to also involve the State Tribal Institutes.



## **Reply of the Government**

2.20 The Ministry has noted the recommendation of the Standing Committee and would ensure frequent field visit of its officials to the States where the progress of implementation of the Act is slow. As regards placing a standing monitoring cell for thorough and meticulous monitoring of the implementation of the Act at every stage, it may be difficult to do so due to constraint of man-power in the Ministry. It is also not feasible to take the help of officers from the State Governments for implementation of the Act as the Ministry does not exercise any administrative control over State Government officers. The Ministry is, however, preparing a compendium of all information including Circulars, Letters, Guidelines, Orders, Memoranda of instructions concerning the Act. This will be sent to State/UT Governments for taking necessary action of translating it into regional languages and circulating to all concerned with the implementation of the Act. The State/UT Governments would also be asked to conduct more and more training programmes, workshops and awareness campaigns at various levels by involving all the stake holders and also make use of the said compendium during such programmes. The State/UT Governments have also been requested to consider participation of NGOs and involvement of social activists and the State Tribal Institutes, in this effort. They have been informed that the expenses on above activities may be met out of allocated grants under Article 275(1) proviso of the Constitution of India.

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### **Recommendation (Sl. No. 21, Para No. 1.99)**

2.21 On the evaluation/impact assessment of the scheme for getting feedback on the implementation of the Act, the Ministry have informed that they had requested the State Governments of Orissa and Madhya Pradesh to undertake studies on the Act. However, both the States are yet to initiate the study on the Act. In the meantime, only a short term study on the Act has been done in the State of Orissa which has revealed crucial

facts/findings about the Act. The Committee are of the view that both the States having a thick cover of forest with large density of population of Scheduled Tribes and other Traditional Forest Dwellers, the studies, if conducted, would provide deep insight into issues relating to implementation of the Act which, in turn, would help the Ministry to fill critical gaps in the implementation process in these States as well as the rest of the country. Therefore, the Committee desire that these studies should be completed at the earliest so that inconsistencies and lacunae in the implementation process are corrected and the Ministry is able to carry out the task of implementation more vigorously. Assistance, if any required, in way of funds/resources, logistics and technical input/support etc. should also be extended to these two States for conducting the above studies. Steps taken in this direction may be apprised to the Committee within three months of the presentation of the Report.

### **Reply of the Government**

2.22 As desired by the Standing Committee, the Ministry has directed both the State Governments of Orissa and Madhya Pradesh on 8<sup>th</sup> February, 2011 to complete the evaluation/impact assessment studies of the Act at the earliest. The Ministry has advised the other State Governments also to initiate similar studies on the performance/impact of the implementation of the Act and the Rules in the field in their States. They had been informed that the expenses on these studies may be met out of the grants under article 275(1) proviso of the Constitution of India.

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### **Recommendation (Sl. No. 23, Para No. 1.104)**

2.23 The Committee take a strong objection to the displacement of the primitive tribal groups i.e. the *Dongoria Kandhas* and the *Kutia Kandhas* settled in the Niyamgiri Hills in the State of Orissa and destruction of undisturbed forest land endangering and harming

their self sufficient forest livelihood due to the proposed Bauxite Mining Project. The Committee are given to understand that the project has been recalled at an advanced stage after uproars and objections from several quarters and also non-clearance of the project by the Ministry of Environment and Forests (MoEF) on grounds of violations of the Forest Rights Act, violations of Forest Conservation Act and violations of the Environment Protection Act (EPA). The Committee, while deprecating the inaction on the part of the Ministry of Tribal Affairs in guarding the interests and rights of these aboriginal people due to which the project could move ahead to such an advanced stage, advise the Ministry to be watchful and keep a constant vigil in ensuring that rights and interests of such people are always looked after, safeguarded and protected.

### **Reply of the Government**

2.24 In connection with the proposal of the Government of Orissa for grant of forest clearance in Kalahandi and Rayagada districts in favour of Orissa Mining Corporation Ltd. (OMC) for Bauxite Mining in Lanjigarh Bauxite Mines, the Ministry of Environment and Forests had constituted a four member committee on 29.06.2010, composed of specialists, including Dr. N. C. Saxena, for looking into (i) settlement of the rights for forest dwellers and the 'Primitive Tribal Groups' under the FRA, 2006; and (ii) Impact on wildlife and biodiversity in the surrounding areas. The said committee had submitted its report to the Ministry of Environment & Forests on 16.08.2010 wherein it found serious violations of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, Forest (Conservation) Act, 1980, Environment (Protection) Act, 1986 etc by the OMC. As a result, the proposal of the State Government for forest clearance for the OMC and Sterlite bauxite mining project on the Niyamgiri Hills in Lanjigarh, Kalahandi and Rayagada districts of Orissa was rejected by the MoS (I/C) Environment & Forests, vide his order dated 24.08.2010,. The Ministry had accordingly

called for the comments of the Government of Orissa on the violations of the Forest Rights Act, 2006, pointed out by the four member committee and action the State Government proposed to take in the matter.

The Ministry has now received a letter dated 10.12.2010 from the Government of Orissa wherein the State Government, while not agreeing with the inferences drawn by the Saxena Committee, has stated that the implementation of the FRA, 2006 with respect to forest rights claims of tribals, PTGs and other forest dwelling communities of villages around the proposed bauxite mining area in forests of Kalahandi and Rayagada districts were carried out in accordance with due process laid down under Rule 11 of FRA Rules. Steps were also taken to provide full administrative and financial support required under law to the Gram Sabha in determining eligible forest right claims for individual & community rights and the result is evident from the large number of individual claims having been settled in Kalahandi and Rayagada as elsewhere in the State. Further, the State Government has been attaching utmost importance to disposal of all pending claims, whether around the villages of project area, or outside, in accordance with the law. There are some existing claims which are being dealt as per due process of law.

The Government of Orissa has also addressed another letter dated 23.12.2010 to Inspector General of Forests, Ministry of Environment & Forests, with a copy to this Ministry, conveying the views of the State Government on the decision of the Hon'ble Minister (I/C), Ministry of Environment & Forests vide his order dated 24.08.2010, rejecting the Stage-II forest clearance of Lanjigarh Bauxite Mining Project of M/s Orissa Mining Corporation Ltd. in Niyamgiri hills of Rayagada and Kalahandi districts of Orissa. In the said letter, the State Government has furnished their comments on different aspects raised in the orders dated 24.08.2010 of Hon'ble Minister, MoEF, including the views of the State Government on the purported violations of Forest Rights Act, 2006,

and requested the Ministry of Environment & Forests to reconsider the matter and communicate its decision, permitting Stage-II clearance for the above project at an early date. The Ministry has written to the Ministry of Environment & Forests on 11.02.2011 to intimate the decision taken by the Ministry in the matter. On 7<sup>th</sup> March 2011, the Ministry of Environment & Forests has informed that the matter is still under consideration. No decision on the matter has been taken so far.

Copies of the Government of Orissa's letters dated 10.12.2010 and 23.12.2010, referred to above, are enclosed at **Annexures I & II** for perusal of the Standing Committee.

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**OBSERVATIONS/ RECOMMENDATIONS WHICH THE COMMITTEE DO NOT DESIRE TO PURSUE IN VIEW OF THE REPLIES OF THE GOVERNMENT**

**Recommendation (Sl. No. 8, Para No. 1.47)**

3.1 The Committee observe that as many as 14 cases challenging the vires of the Act are at present pending in different High Courts which has stalled the process of distribution of title deeds. The Committee find that filing of writ petitions in the States of Tamil Nadu, Andhra Pradesh, Karnataka, Orissa, Himachal Pradesh and Kerala etc. had a damaging effect on the progress of the Act in these States. The Committee view the non-implementation of the Act due to restrictive court orders is a deprivation of the rights of Scheduled Tribes and Other Traditional Forest Dwellers and there is an urgent need to dispose the court orders at the earliest. Therefore, while endorsing the decision of the Ministry for filing a special leave petition in the Supreme Court to fight the cases at one place, the Committee strongly feel that the Ministry may also take up the matter of constituting special courts/tribunals for speedy disposal of the cases to bring relief to the STs and other Traditional Forest Dwellers in those States where the court cases are pending.

**Reply of the Government**

3.2 As earlier intimated to the Standing Committee, the Ministry has filed two transfer petitions on 05.04.2008 and 19.01.2009 for transferring the Writ Petitions filed in the High Court at Andhra Pradesh, Chennai, Madurai Bench of the Madras High Court, Bombay, Karnataka and Orissa for combined hearing along with the Writ petition filed in the Supreme Court. The Ministry has also written to Central Agency Section, Ministry of Law & Justice for filing another Transfer Petition in the Supreme Court for transferring three new Writ Petitions filed before the Principal Bench of MP High Court at Jabalpur against

the Act for combined hearing along with the Writ Petition filed in the Supreme Court. The Ministry is taking all steps necessary for defending and early disposal of the Writ Petitions filed in different High Courts and in the Supreme Court challenging the vires of the Act. The Ministry does not consider it necessary to constitute special courts/tribunals for disposal of these cases, as suggested by the Standing Committee.

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## CHAPTER – IV

### OBSERVATIONS/ RECOMMENDATIONS IN RESPECT OF WHICH REPLIES OF THE GOVERNMENT HAVE NOT BEEN ACCEPTED AND HAVE BEEN COMMENTED UPON IN CHAPTER – I

#### **Recommendation (Sl. No. 6, Para No. 1.45)**

4.1 The Committee are constrained to note that out of a total number of 28,49,000 claims received from 17 States as many as 12,67,928 claims have been rejected after initial verification and scrutiny. The Committee also observe that the Ministry do not have the information as to at which level i. e., Gram Sabha, Sub-Divisional level or District level the rejections are more. The Ministry have maintained that many people have mistook the Act as a land distribution drive and have applied in a large number which is the main cause for rejection of these applications. On the rejection of genuine claims under the Act though the Ministry have maintained that adequate safeguards are in- built in the procedure itself and there is little scope for rejection of genuine claims, the Committee are apprehensive that large number of rejections may have occurred due to procedural reasons where genuine claims of genuine beneficiaries might have been overlooked and rejected on ground of not fulfilling the requirements in the claim procedure such as non-filling of the claim forms properly, non-furnishing of relevant documents etc. Large scale rejections at the Gram Sabha level only where the Gram Sabha takes a decision in an improper way without further hearing of the case at next levels of Committees is totally against the spirit of the Act.. The Committee, therefore, recommend the Ministry to instruct the States to review the rejected cases on their merit so that any genuine claimant is not debarred from recognition of his rights. The Committee desire that a sample survey of the rejected claims should also be undertaken at once to ascertain the specific causes for rejections at such a large scale which will



enable the Ministry to streamline the procedure and make it transparent as far as possible.

### **Reply of the Government**

4.2 As earlier intimated to the Standing Committee, the Ministry has written to the State Governments, vide Secretary (TA)'s letter dated 15<sup>th</sup> July 2010, to initiate action, on a statistically acceptable sampling basis, at the level of Gram Sabha and Sub-Divisional Level Committees for categorizing all rejections, with their numbers, in different categories, like (a) non-availability of written records; (b) non-availability of other criteria specified in Rule 13; (c) non-possession of forest land; (d) non-occupation of the sate relevant to the Act; (e) doubtful tribal status etc. and to include this information in the monthly progress report being sent to this Ministry. The Ministry has conveyed the apprehensions of the Standing Committee about the large number of rejections and requested the State Governments to expedite the action, as suggested in the Secretary (TA)'s letter dated 15<sup>th</sup> July 2010, to ascertain the specific causes for rejections at such a large scale and apprise this Ministry of the out-come. As regards the review of the rejected cases, it may be stated that as per the Act and the Rules framed there-under, the claims filed are adjudicated at three levels, namely, the Gram Sabha, Sub-Divisional Level Committee and finally by the District Level Committee. The decision of the District Level Committee on the record of the forest rights is final and binding. There are provisions for filing petitions by an aggrieved party before the SDLC & DLC. The Act does not contain any provision for review of the claims rejected by the District Level Committee.

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### **Comments of the Committee**

(Please see Para 1.7 of Chapter-I of the Report)

### **Recommendation (Sl. No. 7, Para No. 1.46)**

4.3 The Committee are pained to note that though the Act was notified in the year 2007 and three years have since elapsed the implementation of the Act is still far from satisfactory. Hon'ble President of India had emphasized the need to ensure the distribution of all title deeds to all eligible claimants by end of December, 2009 and though nearly a year has passed since the above direction of the Hon'ble President, the process of distribution of titles is not completed even 50 percent. The Ministry's plea that the Act does not prescribe any time limit for recognition and vesting of forest rights and hence a target date for completion of distribution of title deeds cannot be fixed is not acceptable to the Committee since in the opinion of the Committee the success of implementation of the Act is absolutely dependent on working within a time schedule. Also, the Committee are of the opinion that when the Act had come into force, at the initial stage the Ministry did not have any idea as to how many claims would actually be filed and title deeds to be distributed. However, having completed three years in the implementation process, the Ministry now have a fair idea about the magnitude of number of claims which have to be processed and cleared. Therefore, the Committee recommend the Ministry to fix achievable targets with timeline and chalk out clear-cut and definite strategy for completion of different stages of implementation such as constitution of committees, processing of claims, declaration of Critical Wild Life Habitats, planning for developmental initiatives etc. and put forth the same before the States to achieve. In this effort, the Ministry in-stead of simply maintaining the data on States' progress on paper, the progress on the ground/field should also be reviewed and corrective steps be taken to remove the deficiencies in the States. The Committee may be apprised of the steps taken in this direction within three months of presentation of the Report.

#### **Reply of the Government**

4.4 The Ministry has been emphasizing on the State/UT Governments from time to time for speedy and time-bound implementation of the provisions of the Act and dovetailing all development and welfare programmes for bringing about socio-economic development and livelihood security of all the beneficiaries under the Act. Though the Act does not prescribe any time limit for recognition and vesting of forest rights, the Hon'ble Minister of Tribal Affairs had addressed the State Chief Ministers on 31<sup>st</sup> August 2010 and again on 10<sup>th</sup> November 2010 for ensuring disposal of all the pending claims expeditiously and distribution of title deeds to the eligible claimants. States have again been directed to fix achievable targets with timeline and chalk out a clear cut and definite strategy for completion of different stages of implementation, such as, constitution of committees, processing of claims, declaration of Critical Wild Life Habitats, planning for developmental initiatives etc. They have also been advised to review the progress on the ground/field and take corrective steps to remove the deficiencies. While reviewing the progress during their visit to the States the officers also discuss and address the related issues.

[Ministry of Tribal Affairs O.M. No. 23011/45/2009-SG-II (FRA) (Vol. II) dated 14.03.2011]

#### **Comments of the Committee**

(Please see Para 1.10 of Chapter-I of the Report)

#### **Recommendation (Sl. No. 16, Para No. 1.81)**

4.5 On the declaration of Critical Wild Life Habitats, National Parks and Sanctuaries under Section 2 (b) of the Act, the Committee observe that as on date not a single Critical Wild Life Habitat has been declared. On this issue while the Ministry of Tribal Affairs have tried to put the onus on the Ministry of Environment and Forests by saying that it is they who have to take a decision on the matter, the Ministry of Environment and Forests have tried to justify the delay by saying that the scientific/expert Committees

required for the purpose have not yet been constituted in all the States and the whole thing is a time consuming process. While expressing their dissatisfaction on the inordinate delay in declaring the protected area or Critical Wild Life Habitats, the Committee are of the view that in the absence of clear demarcation of areas protected for wild life habitats, undue advantage/leverage is given to the Forest Department for forceful eviction and harassment of the tribes in the name of protected areas/Critical Wild Life Habitats. Since the Act clearly provides that no eviction and re-location of villagers from protected areas should be allowed to take place till the completion of the process of Forest Rights Committees formation, receipt and verification of claims and recognition of rights, the Committee recommended the Ministry to act swiftly in the matter, put a time frame for the States and direct the States to identify and list out the protected areas within that time frame. The Ministry should also co-ordinate with the Ministry of Environment and Forests for an early decision on the declaration of Critical Wild Life Habitats preferably within a period of six months.

### **Reply of the Government**

4.6 The Ministry has conveyed the observations/recommendations of the Standing Committee to the Ministry of Environment & Forests on 2<sup>nd</sup> February, 2011 which is primarily responsible for determination and notification of critical wildlife habitats in the National Parks and Sanctuaries under Section 2(b) of the Act, for taking action on priority basis. The Ministry has also communicated the recommendations of the Standing Committee to the State/UT Governments, inviting their attention to the clarification given by the Ministry that the rights of the forest dwelling Scheduled Tribes and other traditional forest dwellers occupying forest land in the National Parks and Sanctuaries have to be recognized first under the Act before undertaking any exercise for resettlement and that no eviction and resettlement is permissible till all the formalities are

completed. Their attention has also been invited to the instructions issued by the Ministry of Environment & Forests, vide their letter dated 21<sup>st</sup> June 2010, addressed to the Principal Chief Conservators of Forests, Department of Forests of all States/UTs, to the effect that before taking any decision on displacement of Scheduled Tribes from the National Parks and Sanctuaries, the provisions of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 should be duly complied with. The State Governments have been requested to ensure that the provisions of the Act are followed in letter and spirit in this regard and the critical wildlife habitats are determined and notified at the earliest.

[Ministry of Tribal Affairs O.M. No. 23011/45/2009-SG-II (FRA) (Vol. II) dated 14.03.2011]

### **Comments of the Committee**

(Please see Para 1.13 of Chapter-I of the Report)

### **Recommendation (Sl. No. 18, Para No. 1.83)**

4.7 The Committee note that Minor Forest Produce is central to the existence of tribal communities and the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 is an important milestone which recognizes the ownership rights of these people of Minor Forest Produce for the purpose of access, processing and trade. After the enactment of the Act, the Right of Scheduled Tribes and Other Traditional Forest Dwellers to procure and process Minor Forest produce has now become an indispensable part of the Act and accordingly the Ministry should have redoubled their efforts in ensuring the protection of this primary right of the Scheduled Tribes and Other Traditional Forest Dwellers. The Committee are, however, distressed to note that in addition to the existing efforts which are grossly inadequate, the Ministry have hardly taken any additional initiatives/steps in the area of Minor Forest Produce in the aftermath of the enactment of the Act. The Committee are of the view that the

existing potential of Minor Forest Produce needs to be exploited economically and scientifically so that they continue to remain as a sustainable and renewable source of income/livelihood for the tribal families; more so after the enactment of the Act, the Ministry have become morally obligated and duty bound to ensure that this is done more effectively so that benefits accrue to the needy tribals. The Committee, therefore, recommend the Ministry should pursue with the States to prepare specific action plans under the above Act for harnessing the existing potential in their respective States in a scientific manner, providing technical assistance for value addition to Minor Forest Produce and undertaking procurement activities with improved and up-to-date methods. The Committee further desire that the Ministry should take concrete steps in the direction of creating facilities in the form of Cooperative Societies in States where maximum number of title deeds have been distributed so that the tribal people in these States get assistance/support relating to procurement and marketing of their Minor Forest Produce for which they have been given rights under the Act.

#### **Reply of the Government**

4.8 The Ministry agrees with the observations of the Standing Committee that the Minor Forest Produce (MFP) is central to the existence of the tribal communities and the existing potential of MFP needs to be exploited economically so that they continue to remain as a sustainable and renewable source of income/livelihood for the tribal families. The Ministry has, therefore, been emphasizing on the State/UT Governments, from time to time, the need for taking steps for inviting more community rights claims and vesting more title deeds on such claims. The Ministry has brought the observations of the Standing Committee to the notice of the State/UT Governments on 8<sup>th</sup> February, 2011 and they have been advised to prepare specific action plans for (i) harnessing the existing potential of MFP in their respective States in a scientific manner, (ii) providing technical assistance for value addition to Minor Forest Produce, and (iii) undertaking

procurement activities with improved and up-to-date methods so that the benefits accrue to the needy tribals. The States where maximum number of title deeds has been distributed have been requested to undertake concrete steps for creating facilities in the form of Cooperative Societies so that the title holders get assistance/support relating to procurement and marketing of their Minor Forest Produce.

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### **Comments of the Committee**

(Please see Para 1.16 of Chapter-I of the Report)

**OBSERVATIONS/ RECOMMENDATIONS IN RESPECT OF WHICH REPLIES OF THE GOVERNMENT ARE INTERIM IN NATURE**

**Recommendation (Sl. No. 2, Para No. 1.41)**

5.1 The Committee are unhappy to note the dismal/tardy progress of implementation of the Act where out of a total number of 28,49,000 claims received so far only 9,93,988 title deeds have been distributed in various States which works out to be a mere 32.36%. In this regard the Secretary during the evidence before the Committee sounded much contended with the achievement of the Ministry by saying that originally when the Act came into operation, the Ministry had expected only about three to four lakh claims to be distributed, against which they have distributed almost 10,00,000 claims which far exceeds the expectation. The Committee, however, observe that in many of the States though claims have been received in large numbers, the number of certificates of title deeds actually distributed is far less than the claims filed. The Committee also observe that the implementation of the Act has not been uniform in all the States. While the progress in some States has been satisfactory and palpable, in many other States, the Act does not seem to have made much headway. The contention of the Ministry that the onus of implementation of the Act lies squarely on the States does not seem to be convincing because though the States have to implement the Act, the ultimate responsibility for ensuring the effective implementation of the Act throughout the country lies with the Central Government. The Act being a Government of India Act enacted by the Union Government, it is the Ministry of Tribal Affairs which has to see that States are respecting the Act and progressing well in its implementation. Therefore, the Committee recommend the Ministry, apart from persuading the States, should proactively involve



itself in the implementation process, orient, assist and guide appropriately the States for gearing them up for implementation of the Act. Emphasis should be given to non-performing States where the implementation has been insignificant and negligible by taking up specific steps and reviewing their progress at regular intervals.

### **Reply of the Government**

5.2 As per the information collected by the Ministry from various States/UTs till 31<sup>st</sup> January 2011, a total number of 30,39,955 claims were filed against which 11,09,748 title deeds have been distributed, 34,324 titles were ready for distribution and 14,43,567 claims were rejected. A total number of 25,53,315 claims were thus disposed of, which works out to disposal of nearly 84.00% of the total claims filed. A total of 4,86,640 claims were only pending for disposal. While the State Governments of Andhra Pradesh Chhattisgarh, Karnataka, Madhya Pradesh, Maharashtra, Orissa, Rajasthan, Tripura and Uttar Pradesh have achieved a disposal rate of more than 80% of claims filed, the disposal of the claims in the States of Assam, Gujarat, Jharkhand and Kerala ranges between 26% to 45%. The remaining States are lagging behind in the implementation of the Act for various reasons. The Ministry has accordingly given instructions to all the State Governments to take immediate steps for implementation of the Act and for expeditious disposal of all the pending claims. The States where the implementation of the Act is insignificant and negligible have been requested to analyse the reasons/impediments for the slow progress and take remedial steps for expediting the implementation process.

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### **Recommendation (Sl. No. 3, Para No. 1.42)**

5.3 The Committee note with concern the extremely slow progress of implementation of the Act in the States of Tamil Nadu, Bihar and Uttarakhand where out of a total

number of 16314, 2179 and 182 claims received respectively, not a single title deed has been distributed so far in these States. The Committee take a serious view of less number of claims received in these States as well as the non-distribution of any title deeds in these States and the consequent denial of inherent rights of the Scheduled Tribes and other Traditional Forest Dwellers. While the Committee understand the slow progress of the Act in the State of Tamil Nadu due to the interim Court order, they are not at all convinced by the reasons cited by the Ministry with regard to the States of Bihar and Uttarakhand where it has simply been stated by the Ministry that these States have not intimated the reasons for slow progress of implementation of the Act. The Committee are apprehensive there might be some underlying reasons for which these States in spite of having innumerable Scheduled Tribe population are reluctant and not showing any interest in implementing the Act. Therefore, the Committee recommend the Ministry instead of routinely persuading these States to implement the Act should take up the matter at the highest level for identifying and sorting out the impediments/hurdles in way of implementation of the Act in these States. State Governments of these States should be sensitized about their obligation towards the Act and persuaded to initiate action at the earliest so that the work of distribution of title deeds takes off in these States without further delay. The Committee may be apprised of the progress made in these States within three months of presentation of this Report.

### **Reply of the Government**

5.4 The Ministry has conveyed the observations of the Standing Committee to the Chief Secretaries of the Governments of Tamil Nadu, Bihar and Uttarakhand on 8<sup>th</sup> February, 2011 and advised them to identify and sort out the impediments/hurdles in way of implementation of the Act and take remedial measures so that the work of distribution of title deeds takes off in these States without further delay.

**Recommendation (Sl. No. 13, Para No. 1.78)**

5.5 During their on-the-spot study visit to some States while interacting with the beneficiaries, the Committee have noticed that *pattas* are being given to the Scheduled Tribes and Other Traditional Forest Dwellers to a lesser extent than what is under actual cultivation, boundaries are not being fixed properly and the land being recognized are not fit for cultivation. The Committee are not happy with the above situation because in the opinion of the Committee unless the above concerns are suitably addressed and land made cultivable, the very thrust/purpose of the Act relating to rights of Schedules Tribes and Other Traditional Forest Dwellers to hold and live in forest for habitation or self-cultivation for livelihood is defeated. Therefore, the Committee recommend the Ministry to take urgent necessary steps such as deputation of trained officials, surveyors and expert staff for demarcation and survey of land and field inspection in approachable areas to remedy the above situation. The Ministry should also draw an action plan for the States for taking measures to associate their land recognition programmes with the on-going as well as future rural development schemes. Funds under different schemes should be pooled, converged and utilized for development of land distributed to the Scheduled Tribes and Other Traditional Forest Dwellers beneficiaries under the Act. Agro-forest based activities for income generation should be encouraged and undertaken to enable the beneficiaries a respectable livelihood. Action taken in this direction may be communicated within three months of presentation of this Report.

**Reply of the Government**

5.6 The Ministry has brought the above observations of the Standing Committee to the notice of all the State/UT Governments on 8<sup>th</sup> February, 2011 and they have been advised to take steps for deputation of trained officials, surveyors and expert staff for demarcation and survey of land. The State/UT Governments have also been requested

to draw an action plan for taking measures to associate their land recognition programmes with the on-going as well as future rural development schemes; pooling, convergence and utilization of funds under different schemes for development of land vested in the Scheduled Tribes and OTFDs beneficiaries under the Act; encouragement and undertaking of Agro-forest based activities for income generation to enable the beneficiaries a respectable livelihood.

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**Recommendation (Sl. No. 17, Para No. 1.82)**

5.7 The Committee are happy to note that the State of Orissa has responded well to the provision relating to declaration of 'Critical Wildlife Habitats' and sent proposals pertaining to Gahirmatha Critical Wildlife Habitat, Chilika Nalaban Critical Wild Life Habitats and Chandaka Damapara Sanctuary to the Ministry for notification under the Act. The Committee desire that the Ministry of Tribal Affairs in coordination with the Ministry of Environment and Forests should consider these proposals on their merit and an early decision is taken on declaration of these protected areas in the State. The Committee feel that while there is an urgent need to conserve the forests along with its flora and fauna, the principle of co-existence and co-habitation of the tribal people with nature and its resources should be given utmost priority and efforts should be made not to evict/re-locate the tribal forcefully from the forests. Since many of our critical wildlife are becoming extinct due to lack of their proper preservation and this particular provision under the Act gives an opportunity to do so, the Committee advise the Ministry to impress upon other States also to follow the footsteps of Orissa and take necessary action in identifying and locating the protected areas by sending their proposals to the Government for an early declaration of Critical Wild Life Habitats.

### **Reply of the Government**

5.8 As stated in reply to Recommendation at Sl. No. 16 Para 1.81, the Ministry of Environment & Forests is primarily responsible for determination and notification of critical wildlife habitats in the National Parks and Sanctuaries under Section 2(b) of the Act. The Ministry has, therefore, conveyed the above observations/recommendations of the Standing Committee to the Ministry of Environment & Forests on 2<sup>nd</sup> February, 2011 for taking action on priority basis. The State Govt. have also been suitably advised in this regard as indicated in reply to Recommendation at Sl.No. 16, Para 1.81.

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**Recommendation (Sl. No. 19, Para No. 1.96)**

5.9 The Committee express their concern over the fact that the States/UTs of Arunachal Pradesh, Bihar, Himachal Pradesh, Manipur, Mizoram, Meghalaya, Sikkim, Uttarakhand, Andman & Nicobar Islands, Daman & Diu and Dadra & Nagar Haveli are not sending any monthly progress on the status of the implementation of the Act in their respective States/UTs. Similarly, at present only 9 States are uploading the information on the implementation of the Act on the website <http://forestrights.gov.in> and not all the States are regularly uploading the information. Apart from giving a clear picture on the status of the Act in the States/UTs, sending of monthly progress reports and uploading the information on a regular basis would in a way act as a binding factor for these States/UTs to implement the Act in their areas. Therefore, the Committee desire the Ministry should earnestly pursue and urge the State Governments/UT Administrations of the above States to send the monthly progress reports and also upload the information on the status of implementation of the Act in their respective States/UTs on a regular basis.

### **Reply of the Government**

5.10 The Ministry has written to all the State/UT Governments, including the above mentioned States/UTs of Arunachal Pradesh, Bihar, Himachal Pradesh, Manipur, Mizoram, Meghalaya, Sikkim, Uttarakhand, Andman & Nicobar Islands, Daman & Diu and Dadra & Nagar Haveli to ensure that the monthly progress reports on the status of implementation of the Act in their respective States/UTs are sent to this Ministry on time and the requisite information is uploaded on the Ministry's website on a regular basis.

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### **Recommendation (Sl. No. 22, Para No. 1.103)**

5.11 The Committee observe that a Joint Committee of the Ministry of Tribal Affairs and the Ministry of Environment and Forests has been constituted to study in detail the implementation of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006. This Committee under the Chairmanship of Shri N.C. Saxena has already started the review of different aspects of implementation of the Act. Having observed the mandate of the Committee which includes recommending necessary policy changes in future management of the forestry sector, identifying opportunities and recommending measures to ensure convergence of various beneficiary oriented programmes for forest rights holders, holding public consultation on all relevant issues etc., the Committee are of the opinion that formation of such as Committee is definitely a step forward in addressing the issues concerning the Scheduled Tribes and other Traditional Forest Dwellers. The above Committee may prove to be an ideal platform for the Ministry of Environment and Forest and the Ministry of Tribal Affairs to coordinate and mitigate the unresolved issues relating to the Act resulting in its smooth and effective implementation. Therefore, while welcoming the

constitution of the above Committee, this Committee recommend the Ministry of Tribal Affairs to make best use of this forum for safeguarding and protecting the interests of the Scheduled Tribes and other Traditional Forest Dwellers. The Committee also direct the Ministry to place before themselves the Report of the 'Saxena Committee' as and when it is presented for their consideration.

### **Reply of the Government**

5.12 The Joint Committee of the Ministry of Tribal Affairs and the Ministry of Environment and Forests, constituted under the Chairmanship of Shri N.C. Saxena has since submitted its Report. The Ministry is examining the report and will take appropriate action.

[Ministry of Tribal Affairs O.M. No. 23011/45/2009-SG-II (FRA) (Vol. II) dated 14.03.2011]

**NEW DELHI:**  
**20 December, 2011**  
**29 Agrahayana, 1933 (Saka)**

**DARA SINGH CHAUHAN**  
**Chairman,**  
**Standing Committee on**  
**Social Justice and Empowerment**

Annexure-I

BY FAX/E-MAIL

Shri Vinod Kumar, IFS  
Special Secretary to Govt.  
S.T. & S.C. Development Department



Ph. No. - 0674 - 2392762(O)  
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D.O. No. 44697 / Bhubaneswar

T.D. - II - 32 / 08 CPJ  
Dated 10-11-2010

Dear Sir A.K. Mishra,

I am desired to invite reference to your DO No. 23011/22/2010-FRA dated 19.11.2010 and dated 04.10.2010 relating to comments of Government of Orissa on purported violations of the Forest Rights Act, 2006 as pointed out by the Saxena Committee.

The following facts are furnished for a better appreciation of the response given by this Department:

1. The forest diversion proposal sent by Orissa Mining Corporation is for 660.749 ha located in two districts of Kalahandi (353.136 ha) and Rayagada (307.613 ha). This proposal was first recommended by State Government on 26.02.2005 and received in-principle approval for forest diversion from MoEF, GOI under FC Act, 1980 on 11.12.2008; corrigendum thereof on 30.12.2008 with certain stipulations in line with orders of Hon'ble Supreme Court in IA No. 2134 of 2007.
2. Hon'ble Apex Court had laid importance on the Rehabilitation package of the project and prescribed certain conditions like floating of Special Purpose Vehicle (SPV), payment of NPV, undertaking study on hydrology along with other standard mining prescriptions.
3. Detailed compliance to the stipulations prescribed by the MoEF given during in-principle approval was furnished by State Government to MoEF, GOI on 10.08.2009 requesting accordance of final forest clearance for diversion.
4. The MoEF communicated some fresh guidelines on Forest (Conservation) Act 1980 for diversion of forest land on 03.08.2009 and while doing so, also kept provisions for ensuring compliance of the Forest Rights Act 2006. MoEF sought compliance to these guidelines on 03.11.2009 & 25.11.2009



with regard to above mentioned forest diversion proposal recommended for Stage II clearance. This was followed with composition of Expert Group of 3 Members on 01.01.2010 and they were deputed to carry out site inspections. The MoEF on 11.05.2010 communicated observations of Forest Advisory Committee and followed with constitution of Saxena Committee whose recommendation is the subject of response sought by the Ministry of Tribal Affairs.

5. The Saxena Committee in their report dated 16.08.2010 to MoEF in Section 3, while applauding the progress and pace of implementation of the FRA 2006 in Orissa, have drawn adverse inferences on implementation in and around proposed forest diversion area for bauxite mining and regarded them as violations of FRA 2006 which is reflected in Section IV. III of the Report.
6. Regarding implementation of Forest Right Act, 2006 in the State of Orissa, I would like to emphasize that the Government of Orissa have taken a number of steps for expeditious recognition of forest rights in Orissa and this has enabled Orissa to achieve recognition as one of the leading states in disposal of forest right claims in the country. The steps taken by Government of Orissa is at Annexure- I (A)
7. Further, with regard to comments on ignoring the claims of PTGs, it is submitted that in the districts of Kalahandi and Rayagada, the claims of PTGs have been accorded top priority and the progress in PTG areas is as follows:

District	Status of applications	Community Rights			Individual Rights		
		March 2010	June 2010	Oct, 2010	March 2010	June 2010	Oct, 2010
Kalahandi	No filed before FRC	109	115	145	7735	7763	7963
	No. verified by FRC & sent to Gram Sabha	109	115	145	7735	7763	7963
	No recommended by Gram Sabha to SDLC	109	115	145	6542	7060	7413
	No approved by DLC	109	115	136	6025	6803	7233
	Forest Area for approved community rights (in acres)	15115	15257	18122	8317	9721	10363
Rayagada	No filed before FRC	27	27	27	28147	28147	30053
	No. verified by FRC & sent to Gram Sabha	27	27	27	28147	28147	28147
	No recommended by Gram Sabha to SDLC	0	27	27	28147	28147	28147
	No approved by DLC	0	0	0	10029	10977	12774
	Forest Area for approved community rights (in acres)	0	0	0	16316	17892	20821

A large number of individual forest right claims were recognized for the households belonging to PTGs like Kutla Kandha (1210 households) in Kalahandi District and from Dongaria Kandha (1624 households) & from Lanjla Soura (758 households) in Rayagada District. 5 community rights of Kutla kandha PTG have also been recognized.

8. With reference to the proposed forest diversion area of 660.749 ha for the project proponent, the details of FRA processes followed in the nearby villages is as follows:

- (a) 353.136 ha of forest land is part of Reserved Forest. The villages around the forest constituted the FRC on different dates in March 2008. This was followed by organization of awareness camps, training for filling/determination/verification/ record preparation of claims, facilitating availability of application forms and required documents. The survey squad constituted for this purpose assisted the FRC fully. This was followed with Gram Sabha resolution recommending eligible claims from November 2009. The SDLC of Bhawanipatna on 23.12.2009 recommended individual rights claims of 2375 families and community rights of (relating mostly to MFP collection) for 37 village communities. On subsequent recommendations for community forest right claims of villages in Lanjigarh Block, the SDLC on 04.08.2010 have taken up their proposals for required rectification. These claims are at various stages of scrutiny and will be disposed in accordance with law.
- (b) Remaining 307.613 ha of forest area in Rayagada District is part of Proposed Reserved Forest and Protected Forest. The constitution of FRC in villages around the forest and conduct of Gram Sabha meetings were done from April 2008. This was followed by organization of awareness camps and capacity building as described above. The Gram Sabha resolution recommending eligible claims was sent in November 2009. Although a large number of individual claims were filed, no CFR claims were filed before the FRC of

Gram Sabha till date. This happened inspite of the emphasis given through awareness and repeated monitoring/reviews of community claims particularly in micro-project area for PTGs. The villages having PTGs fall within jurisdiction of K.Singpur & Muniguda Blocks of Muniguda Sub-Division and 56 Dongaria kandha members representing FRC of of these villages & SHG have been trained at the SC & ST Research & Training Institute, Bhubaneswar On 11-12 March 2010 regarding provisions of forest right claims and processes for their community.

9. It is agreed that the provision of law for forest right claims and recognition is an ongoing process and the appropriate authority to initiate process is the Gram Sabha and accordingly a lot of emphasis had been put on the training and capacity building of the Panchayati Raj Institution members. The support and facilitation for Gram Sabha by Government functionaries at local level is also being ensured.

10. Therefore, the inferences drawn by the Saxena Committee for violation of FRA 2006 can not be agreed upon in view of the facts stated above. In this regard, certain issues arising out of the guidelines of MoEF under FC Act, 1980 vide their letter No. 11-9/1998-Fc (pt) dated 30.07.2009 and another on dated 03.08.2009 relate to ensuring compliance of FRA 2006. Since the said guidelines by MoEF were not in accordance with the some provisions of FR Act, 2006, a clarification has been sought from the Ministry of Tribal Affairs vide letter no. TD-II-32/08-40490/CS(STSC) dated 21.10.2010 from the Chief Secretary, Orissa.

11. Further, factual position with records of anthropological and scientific studies on certain points raised by Saxena Committee relating to tribals and forest area in consideration is placed at Annexure-70 for appreciation of the Ministry.

I would therefore convey that implementation of the FRA 2006 with respect to forest right claims of tribal, PTGs and other forest

dwelling communities of villages around the proposed bauxite mining area in forest of Kalahandi & Raygada District were carried out in accordance with due process laid down under Rule 11 of FRA rules. Steps were also taken to provide full administrative and financial support required under law to the Gram Sabha in determining eligible forest right claims for individual & community rights and the result is evident from the large number of individual claims having been settled in Kalahandi and Raygada as elsewhere in the State. As pointed out earlier, all pending claims, whether around the villages of project area, or outside, the Government of Orissa has been attaching utmost importance to disposal of the claims in accordance with the law. There are some existing claims which are being dealt as per due process of law.

*With best wishes,*

Yours sincerely,



(Vinod Kumar)

10.12.2005

Encls Annex A+B

**Shri A K Srivastava**  
**Director,**  
**Ministry of Tribal Affairs,**  
**Government of India,**  
**Shastri Bhawan,**  
**New Delhi- 110001.**

**Steps Taken for effective and expeditious disposal of claims under FRA**

(a) Constitution of prescribed Committees at State level, District level and Sub-Divisional level on 01.02.2008 and from Feb 2008 for organising the following:-

- Constitution of Forest Rights Committee at Village level
- Convening of 'Palli Sabha' meetings
- Orientation, awareness and sensitization programmes for Government and Panchayat officials, non-officials, NGOs, villagers
- Regular communications with GOI and Districts on issues, clarifications and directions with video conferencing at fortnightly intervals
- Squad approach for facilitating / guiding for filing of proper claims, assisting FRC in spot verification, preparation of record of claims with evidence, and Gram Sabha resolutions recommending claims to SDLC.

(b) The distribution of approved titles certificates to entitled persons got withheld upto 12.08.2009 on account of interim orders of Hon'ble High Court Orissa in WP(C) 4933 of 2008 filed by the Society of Retired Forest Officers on 23.07.2008 and resultant directions thereon as shown below:-

- Interim order on 23.07.2008: not to undertake felling of trees in Sanctuaries etc.
- Interim order on 02.09.2008: allowed to identify claims but no final decision on the same.
- Interim orders were vacated on 12.08.2009 to allow issue certificate of titles to eligible persons subject to result of main petition.
- ST & SC Development Department issued orders to the Collectors on 19.08.2009 to issue Certificate of Titles.

(c) Simultaneous actions were initiated for convergence of programmes/schemes for the benefit of recognized title holders under FRA:-

- For covering all cases of pre-1980 forest encroachment identified for tribals and pending stage II clearance of GOI under FC Act 1980
- To settle claims of tribals on non-forest revenue land under OPLE Act or OGLS Act as per procedure
- To develop land with forest rights title through ITDAs and Soil Conservation by converging NREGS, Missions of Horticulture and other ongoing projects

Awareness activities and training programme continued in 2010-11.

CLARIFICATION/REPLY

SL. NO	AREA OF CONCERN	CLARIFICATION/REPLY
1	Destruction of one of the most sacred sites of the Kondh Primitive Tribal Groups	Niyamgiri Hill is not a single hill but it is a hill range. Lot of anthropological researches have been undertaken to study the life style and culture of Dongria Kondh. The book "The Kandha of Orissa" published by SCSTRTI in 1982 covers in details all the aspects of Dongria Kondh. Page No 181 explains about Niyam Raja and page 185 about Sacredness. The highest peak in Niyamgiri Hill range (around 1500 M above MSL) called Hundjfall Hill and located around 15-20 Km S-E of proposed Bauxite Mining lease area only is considered as Sacred hill. Detailed study under taken by number of anthropologist about the origin of Dongria Kondh has recently been published in the form of a Book called " Forest Tribes of Orissa , Vol-1, Dongaria Kondh" which clearly states that Niyam raja is nothing to do with any of the mountain. It was the name of their first King Niyam (Seventh son of King Birbijia) which was given by Dharam Devta (Refer page 159-161). Hence, stating that one of the most sacred sites of PTG will be destroyed is totally misleading and untrue.
2	Destruction of more than seven square kilometers of sacred, undisturbed forest land on top of the mountain that has been protected by the Dongria Kondh for centuries as sacred to Niyam raja and as essential to preserving the region's fertility	As mentioned above, the proposed mining lease area is not sacred place. Further, out of total 7 square km area only around 3.6 square Km area is Bauxite bearing area. Total area of Niyamgiri Hill range is 250 Sq Km. Hence, only 1.5 % of Niyamgiri Hill range and that too also the last hill where there is no habitation, no water body and bald hill has been proposed for bauxite Mining. After mining, the entire area will be converted to a green area by planting trees as only 20 -25 Ha area will be opened for mining at any point of time. The practice has already been shown at Panchpatmali Hill of NALCO where similar mining is being taken place. After mining, the water availability in the entire area is likely to improve as per the special study conducted by CMPDIL on the instructions of Hon'ble Supreme court.
3.	Endanger the self sufficient forest-based livelihood of these Primitive Tribal Groups	First of all Dongria Kondh is not an endangered community and they have recorded appreciable increase of their population as available from the time series data. They are specialist in horticulture and have expertise in Pineapple, Turmeric and banana cultivation. The proposed mining lease area is not having much plantation or vegetation cover and the area looks like a bald hill, typical characteristics of Bauxite Deposit in East Coast Gnat Area. There will be hardly any loss of forest resources due to the mining operations that will endanger the self-sufficient forest based livelihood of Dongria Kondh. It needs to be pointed out here that instead, large number of forest species will be planted (for re-generation) to recoup the forest losses that will be caused. Hence, the assumption that opening mines will endanger the self sufficient forest based livelihood of Dongria Kondh is an exaggeration of the facts.

CLARIFICATION/REPLY

SL NO	AREA OF CONCERN	CLARIFICATION/REPLY
4	<p>Seriously harm the livelihood of hundreds of Dalit families who indirectly depend upon these lands through economic relationship with Primitive Tribe groups</p>	<p>Dongria Economy is studied and presented in detail in the book Forest Tribes of Orissa (page 75-104). Page 78 clearly states that "Although the forest is in a severe state of degradation, the collection of forest products and hunting continue to be subsidiary occupation for the Dongria as a whole. Thus, shifting cultivation is given the highest priority, with horticulture coming second and plain land agriculture third; apart from this, several tribal complement their earnings by taking up small businesses or service, or seek wage paid jobs or other off-farm activities". Hence, the apprehension raised is only a mental construct which is far away from ground realities.</p>
5	<p>Build road through the Dongria Kondh's territories making the area easily accessible to poachers of wildlife and timber smugglers threatening to the rich bio-diversity of the hills</p>	<p>It has been planned to connect all the villages located not only in Niyamgiri hill ranges but other areas also to the nearby block office and health facilities. In the last few incidences of Diarrhea and Cholera outbreak, the problem was faced mainly due to inaccessibility of the areas. It is one of the priority areas of the Government to provide safe drinking water, health, electricity and connectivity to all the remotest located villages. Hence, on the pretext that providing connectivity to the remote villages may pose threat to bio-diversity, development of the tribal villages cannot be stopped. To tackle the issue of poaching of wildlife and smuggling of timbers, adequate forest laws are there and forest department is capable enough to handle such issues as being done in other parts of the state / country. However, strict adherence and enabling institutional and man power provision can be put in place to avoid any kind of unforeseeable threats like poaching of wildlife and timber smugglers that are threatening to the rich bio-diversity of the hills.</p>

11000X200-II

Government of Orissa  
Forest & Environment Department

No.10 F (Cons) - 50/2009(Vol-II)- 26845/F&E dated: 23-12-10

From

Sri B.P. Singh, IFS  
Special Secretary to Government

To

The Inspector General of Forests,  
Govt. of India, Ministry of Environment & Forest,  
(.F.C.Division), Paryavaran Bhawan,  
C.G.O. Complex, Lodhi Road,  
New Delhi -110003

Sub: Diversion of 660.749ha. of forest land in Kalahandi(South) Forest Division and Rayagada Forest Division in favour of the Orissa Mining Corporation Ltd.(OMC) for mining of Bauxite in Lanjigarh Bauxite Mines.

Sir,

I am directed to invite a reference to the letter No. F. No. 8-23/2005-FC dt. 30.8.2010 AIG(Forest) of MoEF along with orders of the Hon'ble Minister(I/c), MoEF, Government of India dated 24-08-10 communicating therein the decision of MoEF rejecting the Stage-II forest clearance of Lanjigarh Bauxite Mining Project of M/s Orissa Mining Corporation Ltd., a State Government Undertaking (the user agency) in Niyamgiri hills of Rayagada and Kalahandi districts of Orissa. Further the letter dated 13-09-10 of Government of India, MoEF states therein that due to rejection of Stage-II forest clearance for the Lanjigarh Bauxite Mining Project by MoEF, the Environmental Clearance granted to this Project by MoEF on 28-04-09 stands in-operable.

The matter concerning violations of Forest Rights Act has been investigated by the ST&SC Development Department of the State which is the Nodal Department for implementing the provisions of the Forest Rights Act in the State. The ST&SC Development Department have submitted a detailed report in this context to the Ministry of Tribal Affairs vide their letter dt. 10.12.2010 in response to the MoTA, letter dt. 19.11.2010 and 4.10.2010. A copy of the said letter is enclosed as *Annexure-II(A)* This letter states about implementation of the Forest Rights Act in the areas where forest land is proposed for diversion for this mining project.



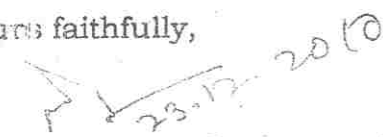
With regard to the observation made by the Ministry pertaining to viola- of Forest Conservation Act, 1980, it is to mention that the proposal of IDCO(the user agency) to withdraw the forest diversion proposal involving 58.943ha. of forest land including 28.943ha. of village forest land for the Alumina Refinery project of Vedanta Alumina Ltd. at Lanjigarh was accepted by the Government of India, MoEF vide their letter F. No. 8-86/2004-FC dt. 28.3.2005. The forest diversion proposal was then allowed to be withdrawn on several grounds like the gramya jungle jogya land in the Alumina refinery area, which will not be utilized by the project, shall be demarcated and protected with watch and ward at project cost along with free access to be allowed to the people belonging to the villages to whom the such patches of land belongs to. However, in view of observation of Government of India, MoEF regarding this gramya jungle jogya land within the refinery complex, the IDCO/project proponent may be asked to file forest diversion proposal in respect of this patch of forest land. In that case pending forest diversion for such forest land, the access for local villagers to the land under question will continue.

The user agency i.e. OMC Ltd. has furnished its report/comments on all the observations of the Ministry of Environment & Forests, Government of India including the alleged violations of Forest Rights Act in this case. A detailed note indicating factual position/compliance on different aspects of the project is also enclosed herewith as Annexure II(D) for kind reference.

The Sterlite Industries(I) Ltd., a stakeholder in the Special Purpose Vehicle(SPV) constituted under the direction of Hon'ble Supreme Court, in their letter dt. 4.12.2010 has already communicated with Ministry of Environment & Forests indicating therein the steps taken by the SPV(Lanjigarh Project Area Development Foundation) in the project area. A copy of the said letter of SILL is also enclosed herewith as Annexure III(E) for ready reference.

In view of the above, Ministry of Environment & Forests, may reconsider the matter in proper perspective and communicate its decision permitting Stage-II clearance at an early date.

Yours faithfully,

  
Special Secretary to Government

Memo. No. 26846 /F&E dt. 23-12-10

Copy along with copy of the enclosures forwarded to Sri A.K. Srivastava, Director, Ministry of Tribal Affairs, Government of India, Shastri Bhawan, New Delhi-110001 for information and necessary action in continuation to D.O. letter dt. 10.12.2010 of the ST&SC Development Department, Government of Orissa.

Special Secretary to Government

Memo. No. 26847 /F&E dt. 23-12-10

Copy along with copy of the enclosures forwarded to the Chief Conservator of Forests (Central), Government of India, MoEF, A/3, Chandrasekharpur, Bhubaneswar for information and necessary action.

Special Secretary to Government

Memo. No. 26848 /F&E dt. 23-12-10

Copy forwarded to the Principal Resident Commissioner, Government of Orissa, 4, Bordoloi Marg, Chanakyapuri, New Delhi-110021 for information and necessary action.

Special Secretary to Government

Memo. No. 26849 /F&E dt. 23-12-10

Copy forwarded to the Steel & Mines Department/ST&SC Development Department for information and necessary action.

Special Secretary to Government

Memo. No. 26850 /F&E dt. 23-12-10

Copy forwarded to the Pr. CCF, Orissa/Pr.CCF (WL) &CWLW, Orissa for information and necessary action.

Special Secretary to Government

Memo. No. 26851 /F&E dt. 23-12-10

Copy forwarded to the Managing Director, Orissa Mining Corporation Ltd., Bhubaneswar for information and necessary action.

Special Secretary to Government

Shri Vinod Kumar, IFS  
Special Secretary to Govt.  
S.T. & S.C. Development Department



Ph. No. - 0674 - 2392762(0)  
Fax - 0674 - 2396806

D.O. No. \_\_\_\_\_ / Bhubaneswar

FD-11-32108CPJ

Dated 10-12 November, 2010

Dear

I am desired to invite reference to your DO No. 23011/22/2010-FRA dated 19.11.2010 and dated 04.10.2010 relating to comments of Government of Orissa on purported violations of the Forest Rights Act, 2006 as pointed out by the Saxena Committee.

The following facts are furnished for a better appreciation of the response given by this Department:

1. The forest diversion proposal sent by Orissa Mining Corporation is for 660.749 ha located in two districts of Kalahandi (353.136 ha) and Rayagada (307.613 ha). This proposal was first recommended by State Government on 26.02.2005 and received in-principle approval for forest diversion from MoEF, GOI under FC Act, 1980 on 11.12.2008; corrigendum thereof on 30.12.2008 with certain stipulations in line with orders of Hon'ble Supreme Court in IA No. 2134 of 2007.
2. Hon'ble Apex Court had laid importance on the Rehabilitation package of the project and prescribed certain conditions like floating of Special Purpose Vehicle (SPV), payment of NPV, undertaking, study on hydrology along with other standard mining prescriptions.
3. Detailed compliance to the stipulations prescribed by the MoEF given during in-principle approval was furnished by State Government to MoEF, GOI on 10.08.2009 requesting accordance of final forest clearance for diversion.
4. The MoEF communicated some fresh guidelines on Forest (Conservation) Act 1980 for diversion of forest land on 03.08.2009 and while doing so, also kept provisions for ensuring compliance of the Forest Rights Act 2006. MoEF sought compliance to these guidelines on 03.11.2009 & 25.11.2009

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with regard to above mentioned forest diversion proposal recommended for Stage II clearance. This was followed with composition of Expert Group of 3 Members on 01.01.2010 and they were deputed to carry out site inspections. The MoEF on 11.05.2010 communicated observations of Forest Advisory Committee and followed with constitution of Saxena Committee whose recommendation is the subject of response sought by the Ministry of Tribal Affairs.

5. The Saxena Committee in their report dated 16.08.2010 to MoEF in Section 3, while applauding the progress and pace of implementation of the FRA 2006 in Orissa, have drawn adverse inferences on implementation in and around proposed forest diversion area for bauxite mining and regarded them as violations of FRA 2006 which is reflected in Section IV. III of the Report.
6. Regarding implementation of Forest Right Act, 2006 in the State of Orissa, I would like to emphasize that the Government of Orissa have taken a number of steps for expeditious recognition of forest rights in Orissa and this has enabled Orissa to achieve recognition as one of the leading states in disposal of forest right claims in the country. The steps taken by Government of Orissa is at Annexure- II (B)
7. Further, with regard to comments on ignoring the claims of PTGs, it is submitted that in the districts of Kalahandi and Rayagada, the claims of PTGs have been accorded top priority and the progress in PTG areas is as follows:

District	Status of applications	Community Rights			Individual Rights		
		March 2010	June 2010	Oct, 2010	March 2010	June 2010	Oct, 2010
Kalahandi	No filed before FRC	109	115	145	7735	7763	7963
	No. verified by FRC & sent to Gram Sabha	109	115	145	7735	7763	7963
	No recommended by Gram Sabha to SDLC	109	115	141	6542	7060	7413
	No approved by DLC	109	115	136	6025	6803	7233
	Forest Area for approved community rights (in acres)	15115	15297	18122	8317	9721	10363
Rayagada	No filed before FRC	27	27	27	28147	28147	30053
	No. verified by FRC & sent to Gram Sabha	27	27	27	28147	28147	28147
	No recommended by Gram Sabha to SDLC	0	27	27	28147	28147	28147
	No approved by DLC	0	0	0	10029	10977	12774
	Forest Area for approved community rights (in acres)	0	0	0	16316	17892	20821

A large number of individual forest right claims were recognized for the households belonging to PTGs like Kutia Kandha (1210 households) in Kalahandi District and from Dongaria Kandha (1624 households) & from Lanjia Soura (758 households) in Rayagada District. 5 community rights of Kutia kandha PTG have also been recognized.

8. With reference to the proposed forest diversion area of 660.749 ha for the project proponent, the details of FRA processes followed in the nearby villages is as follows:

(a) 353.136 ha of forest land is part of Reserved Forest. The villages around the forest constituted the FRC on different dates in March 2008. This was followed by organization of awareness camps, training for filing/determination/verification/ record preparation of claims, facilitating availability of application forms and required documents. The survey squad constituted for this purpose assisted the FRC fully. This was followed with Gram Sabha resolution recommending eligible claims from November 2009. The SDLC of Bhawanipatna on 23.12.2009 recommended individual rights claims of 2375 families and community rights of (relating mostly to MFP collection) for 37 village communities. On subsequent recommendations for community forest right claims of villages in Lanjigarh Block, the SDLC on 04.08.2010 have taken up their proposals for required rectification. These claims are at various stages of scrutiny and will be disposed in accordance with law.

(b) Remaining 307.613 ha of forest area in Rayagada District is part of Proposed Reserved Forest and Protected Forest. The constitution of FRC in villages around the forest and conduct of Gram Sabha meetings were done from April 2008. This was followed by organization of awareness camps and capacity building as described above. The Gram Sabha resolution recommending eligible claims was sent in November 2009. Although a large number of individual claims were filed, no CFR claims were filed before the FRC of

Gram Sabha till date. This happened inspite of the emphasis given through awareness and repeated monitoring/reviews of community claims particularly in micro-project area for PTGs. The villages having PTGs fall within jurisdiction of K.Singpur & Muniguda Blocks of Muniguda Sub-Division and 56 Dongaria kandha members representing FRC of of these villages & SHG have been trained at the SC & ST Research & Training Institute, Bhubaneswar On 11-12 March 2010 regarding provisions of forest right claims and processes for their community.

9. It is agreed that the provision of law for forest right claims and recognition is an ongoing process and the appropriate authority to initiate process is the Gram Sabha and accordingly a lot of emphasis had been put on the training and capacity building of the Panchayati Raj Institution members. The support and facilitation for Gram Sabha by Government functionaries at local level is also being ensured.
10. Therefore, the inferences drawn by the Saxena Committee for violation of FRA 2006 can not be agreed upon in view of the facts stated above. In this regard, certain issues arising out of the guidelines of MoEF under FC Act, 1980 vide their letter No. 11-9/1998-Fc. (pt) dated 30.07.2009 and another on dated 03.08.2009 relate to ensuring compliance of FRA 2006. Since the said guidelines by MoEF were not in accordance with the some provisions of FR Act, 2006, a clarification has been sought from the Ministry of Tribal Affairs vide letter no. TD-II-32/08-40490/CS(STSC) dated 21.10.2010 from the Chief Secretary, Orissa.
11. Further, factual position with records of anthropological and scientific studies on certain points raised by Saxena Committee relating to tribals and forest area in consideration is placed at Annexure II(C) for appreciation of the Ministry.

I would therefore convey that implementation of the FRA 2006 with respect to forest right claims of tribal, PTGs and other forest

dwelling communities of villages around the proposed bauxite mining area in forest of Kalahandi & Raygada District were carried out in accordance with due process laid down under Rule 11 of FRA rules. Steps were also taken to provide full administrative and financial support required under law to the Gram Sabha in determining eligible forest right claims for individual & community rights and the result is evident from the large number of individual claims having been settled in Kalahandi and Raygada as elsewhere in the State. As pointed out earlier, all pending claims, whether around the villages of project area, or outside, the Government of Orissa has been attaching utmost importance to disposal of the claims in accordance with the law. There are some existing claims which are being dealt as per due process of law.

Yours sincerely,



(Vinod Kumar)

**Shri A K Srivastava**  
**Director,**  
**Ministry of Tribal Affairs,**  
**Government of India,**  
**Shastri Bhawan,**  
**New Delhi- 110001.**

Memo No. 44698 /SSD., dated 10-12-2010

Copy forwarded to the Principal Secretary to Government, Forest & Environment Department for information with reference to D.O. No.23011/22/2010-FRA, dated 4.10.2010 of Sri A.K.Srivastava, Director, Ministry of Tribal Affairs, Shastri Bhawan, New Delhi (copy enclosed).

  
Special Secretary to Govt.

**Steps Taken for effective and expeditious disposal of claims under FRA**

(a) Constitution of prescribed Committees at State level, District level and Sub-Divisional level on 01.02.2008 and from Feb 2008 for organising the following:-

- Constitution of Forest Rights Committee at Village level
- Convening of 'Palli Sabha' meetings
- Orientation, awareness and sensitization programmes for Government and Panchayat officials, non-officials, NGOs, villagers
- Regular communications with GOI and Districts on issues, clarifications and directions with video conferencing at fortnightly intervals
- Squad approach for facilitating / guiding for filing of proper claims, assisting FRC in spot verification, preparation of record of claims with evidence, and Gram Sabha resolutions recommending claims to SDLC.

(b) The distribution of approved titles certificates to entitled persons got withheld upto 12.08.2009 on account of interim orders of Hon'ble High Court Orissa in WP(C) 4933 of 2008 filed by the Society of Retired Forest Officers on 23.07.2008 and resultant directions thereon as shown below:-

- Interim order on 23.07.2008: not to undertake felling of trees in Sanctuaries etc.
- Interim order on 02.09.2008: allowed to identify claims but no final decision on the same.
- Interim orders were vacated on 12.08.2009 to allow issue certificate of titles to eligible persons subject to result of main petition.
- ST & SC Development Department issued orders to the Collectors on 19.08.2009 to issue Certificate of Titles.

(c) Simultaneous actions were initiated for convergence of programmes/schemes for the benefit of recognized title holders under FRA:-

- For covering all cases of pre-1980 forest encroachment identified for tribals and pending stage II clearance of GOI under FC Act 1980
- To settle claims of tribals on non-forest revenue land under OPLE Act or OGLS Act as per procedure
- To develop land with forest rights title through ITDAs and Soil Conservation by converging NREGS, Missions of Horticulture and other ongoing projects

Awareness activities and training programme continued in 2010-11.



REPLY TO SPECIFIC POINTS RELATED WITH TRIBAL RAISED BY MOEF IN HIS REPORT DATED 24-08-2010 (Page-5)

22

Amr...

SL. NO	AREA OF CONCERN	CLARIFICATION/REPLY
1	Destruction of one of the most sacred sites of the Kondh Primitive Tribal Groups	Niyamgiri Hill is not a single hill but it is a hill range. Lot of anthropological researches have been undertaken to study the life style and culture of Dongria Kondh. The book "The Kandha of Orissa" published by SCSTRTI in 1982 covers in details all the aspects of Dongria Kondh. Page No 181 explains about Niyam Raja and page 185 about Sacredness. The highest peak in Niyamgiri Hill range (around 1500 M above MSL) called Hundjiali Hill and located around 15-20 Km S-E of proposed Bauxite Mining lease area only is considered as Sacred hill. Detailed study under taken by number of anthropologist about the origin of Dongria Kondh has recently been published in the form of a Book called " Forest Tribes of Orissa, Vol-1, Dongaria Kondh" which clearly states that Niyam raja is nothing to do with any of the mountain. It was the name of their first King Niyam (Seventh son of King Biribija) which was given by Dharam Devta (Refer page 159-161). Hence, stating that one of the most sacred sites of PTG will be destroyed is totally misleading and untrue.
2	Destruction of more than seven square kilometers of sacred, undisturbed forest land on top of the mountain that has been protected by the Dongria Kondh for centuries as sacred to Niyam raja and as essential to preserving the region's fertility	As mentioned above, the proposed mining lease area is not sacred place. Further, out of total 7 square km area only around 3.6 square Km area is Bauxite bearing area. Total area of Niyamgiri Hill range is 250 Sq Km. Hence, only 1.5 % of Niyamgiri Hill range and that too also the last hill where there is no habitation, no water body and bald hill has been proposed for bauxite Mining. After mining, the entire area will be converted to a green area by planting trees as only 20 -25 Ha area will be opened for mining at any point of time. The practice has already been shown at Panchpatmali Hill of NALCO where similar mining is being taken place. After mining, the water availability in the entire area is likely to improve as per the special study conducted by CMPDL on the instructions of Hon'ble Supreme court.
3.	Endanger the self sufficient forest-based livelihood of these Primitive Tribal Groups	First of all Dongria Kondh is not an endangered community and they have recorded appreciable increase of their population as available from the time series data. They are specialist in horticulture and have expertise in Pineapple. Turmeric and banana cultivation. The proposed mining lease area is not having much plantation or vegetation cover and the area looks like a bald hill, typical characteristics of Bauxite Deposit in East Coast Gnat Area. There will be hardly any loss of forest resources due to the mining operations that will endanger the self-sufficient forest based livelihood of Dongria Kondh. It needs to be pointed out here that instead, large number of forest species will be planted (for re-generation) to recoup the forest losses that will be caused. Hence, the assumption that

seriously harm the livelihood of hundreds of Dalit families who indirectly depend upon these lands through economic relationship with Primitive Tribe groups

Build road through the Dongria Kondh's territories, making the area easily accessible to poachers of wildlife and timber smugglers threatening to the rich bio-diversity of the hills

Dongria Economy is studied and presented in detail in the book Forest Tribes of Orissa (page 75-104). Page 78 clearly states that "Although the forest is in a severe state of degradation, the collection of forest products and hunting continue to be subsidiary occupation for the Dongria as a whole. Thus, shifting cultivation is given the highest priority, with horticulture coming second and plain land agriculture third; apart from this, several tribal complement their earnings by taking up small businesses or service, or seek wage paid jobs or other off-farm activities". Hence, the apprehension raised is only a mental construct which is far away from ground realities.

It has been planned to connect all the villages located not only in Niyamgiri hill ranges but other areas also to the nearby block office and health facilities. In the last few incidences of Diarrhea and Cholera outbreak, the problem was faced mainly due to inaccessibility of the areas. It is one of the priority areas of the Government to provide safe drinking water, health, electricity and connectivity to all the remotest located villages. Hence, on the pretext that providing connectivity to the remote villages may pose threat to bio-diversity, development of the tribal villages cannot be stopped. To tackle the issue of poaching of wildlife and smuggling of timbers, adequate forest laws are there and forest department is capable enough to handle such issues as being done in other parts of the state / country. However, strict adherence and enabling institutional and man power provision can be put in place to avoid any kind of unforeseeable threats like poaching of wildlife and timber smugglers that are threatening to the rich bio-diversity of the hills.

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GOVERNMENT OF INDIA  
जनजातीय कार्य मंत्रालय  
MINISTRY OF TRIBAL AFFAIRS  
शास्त्री भवन, नई दिल्ली-110001  
SHASTRI BHAWAN, NEW DELHI-1100  
Tel: 23387444, Fax: 23383968



D.O.No. 23011/22/2010-FRA

Dated: 4.10.2010

Dear *Shri Kumar,*

Kindly refer to the order dated 24.08.2010 of the Minister of State (I/C) Environment & Forests, issued in connection with the proposal of the Government of Orissa for grant of forest clearance in Kalahandi and Rayagada districts in favour of Orissa Mining Corporation Ltd. (OMC) for Bauxite Mining in Lanjigarh Bauxite Mines.

2. It is observed from the said order that four member committee constituted by the Ministry of Environment & Forests on 29.06.2010, composed of specialists, including Dr. N.C. Saxena, for looking into (i) settlement of the rights for forest dwellers and the 'Primitive Tribal Groups' under the FRA, 2006; and (ii) Impact on wildlife and biodiversity in the surrounding areas, in its report submitted on 16.08.2010, had *inter alia* found serious violations of the Forest Rights Act, 2006, Forest (Conservation) Act, 1980, Environment (Protection) Act, 1986 etc. by the OMC. As a result, the proposal of the State Government for forest clearance for the OMC and Sterlite bauxite mining project on the Niyamgiri Hills in Lanjigarh, Kalahandi and Rayagada districts of Orissa, has been rejected by the Minister.

3. It is requested that the comments of the State Government of Orissa on the violations of the Forest Rights Act, 2006, pointed out by the four member committee and the action the State Government proposes to take in the matter may kindly be furnished to this Ministry at an early date.

With regards,

Yours sincerely,

*A.K. Srivastava*  
04/10/10  
(A.K. Srivastava)

**Shri Vinod Kumar**  
Special Secretary  
ST & SC Development Department  
Government of Orissa  
Bhubaneswar

**DETAILS NOTE ON DIFFERENT ASPECTS RAISED IN THE ORDERS DT. 24.8.2010 OF HON'BLE MINISTER, MOEF, GOVERNMENT OF INDIA**

(1) MoEF, Government of India had granted Stage-I forest clearance for diversion of 660.749 Ha. of forest land on dtd. 11-12-08 within the Mining Lease area for the purpose of Mining and 33.73 Ha. of forest land on dtd. 15-04-09 for the purpose of Conveyor Corridor and Mine Access Road in favour of Orissa Mining Corporation Ltd. for compliance of the stipulations prescribed therein in order to seek final forest clearance. After duly complying with the stipulations of both the Stage-I forest clearance orders, the State Government furnished detailed compliance on both the proposals to the MoEF, Government of India on dtd. 10-8-09 seeking Stage-II/final forest clearance. Similarly, on dt. 28.4.09 MoEF, Government of India, granted Environmental Clearance for the proposed Mining Project. Further, on being asked by the MoEF, Government of India, the State Government furnished necessary certificates of the Collectors of Kalahandi and Rayagada districts certifying compliance to the provisions of the Scheduled Tribes & Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (in short Forest Rights Act 2006). MoEF, Government of India asked the Usha Ramanathan Committee for field inspection in Jan-Feb 2010. Further another Committee led by Dr. N.C. Saxena, Member NAC was asked to visit the area in July, 2010 for inspection. The latter Committee besides deliberating with District Level Officials in the project site, had extensive discussion with State Government officers including the Chief Secretary, Orissa and other senior officers of concerned departments. Although the State Government had many reservations regarding the 'Terms of Reference' of these two Committees (as the TORs included re-examination of issues which have already been examined threadbare and duly adjudicated upon by the Hon'ble Supreme Court while granting its approval to the proposed Mining Project vide its order dated 23-11-07 and 08-08-08); yet the State Government extended due courtesy and co-operation to the Committees during their field inspections.

(2) The N.C. Saxena Committee report was made available in the web-site of MoEF on 16-08-10. Since the State Government had serious reservations about the findings of the Saxena Committee, it requested MoEF on 17-08-10 to give the State Government a reasonable opportunity of being heard before taking a final decision on forest/environmental clearance concerning this mining project based on the Saxena Committee report. The Hon'ble Chief Minister of Orissa and a delegation of senior Secretaries of the State Government belonging to Departments of Forest & Environment, SC & ST Development and Steel & Mines met the Hon'ble Minister, E&F on 23.8.2010 and 24.8.2010 respectively and apprised all the relevant facts to him. However, on the same day i.e. on 24-08-10 and within an hour of deliberating with the official delegation of the State Govt., the MoEF,

Government of India released its order in a press conference rejecting the Stage-II forest clearance for the proposed Mining Project and deciding to issue show cause notice to the Alumina Refinery Project at Lanjigarh for withdrawal of the Environmental Clearance for 1 MTPA annual production and also for withdrawal of the approved Terms of Reference (TOF) for the EIA report for the proposed expansion of the capacity of the Refinery Project from 1 MTPA to 6 MTPA.

(3) The decision of Government of India, MoEF dated 24-08-10 rejecting the Stage-II forest clearance to Lanjigarh Bauxite Mining project seems to be based on the following grounds.

- (a) Ecological costs of Mining (Adverse impact on Wildlife, Bio-diversity, Ecology, Vegetation, Water Supply, etc.)
- (b) Human costs of Mining (Adverse impact on the social, cultural, economical and religious life of the Dongaria Kandhas, a Primitive Tribal Group.)
- (c) Very Limited Relevance to the expanded Refinery
- (d) Violation of FC Act'1980
- (e) Violation of EP Act'1986

- M/s. Vedanta Aluminium Ltd. (VAL) has already proceeded with construction activity for its expansion project from 1 MTPA capacity to 6 MTPA capacity without obtaining Environmental Clearance.
- Since the Company, VAL, has illegally occupied 26.123 Ha. of village forest land within the refinery boundary with active collusion of concerned officials, the Environmental Clearance given to the Company for setting up the refinery (1MTPA capacity) is legally invalid and has to be set aside.
- Case before the NEAA filed by the Dongaria Kandhas
- Questionable sourcing of Bauxite by the Alumina Refinery in violation of conditions of Environmental Clearance.
- Monitoring Report of the Eastern Regional office dated 25-5-10.

- (f) Violations of the rights of the tribal groups including Primitive Tribal Groups and Dalits provided under FRA'2006

(4) **Ecological Cost and Human Costs of Mining**

- (a) Issues relating to 'Ecological Costs of Mining', 'Human Costs of Mining', 'Impact on Bio-diversity', etc. have already been thoroughly examined by the Hon'ble Supreme Court on the basis of studies made by Expert organizations of repute like WII, Dehra Dun and CMPDIL, Ranchi who were appointed by MoEF as per the direction of the Hon'ble Supreme Court. The Wildlife Institute of India was appointed

to conduct studies on impact of mining on bio-diversity including wildlife and its habitat. Similarly, the CMPDIL, Ranchi was asked to conduct studies related to soil erosion, impact on ground vibration, hydrological characteristics including ground porosity permeability as flow of nature water sources. These expert agencies involved their technical personnel and conducted in-depth studies and submitted their report to the MoEF. The gist of the finding of these expert agencies is furnished below.

**(i) Impact of Bauxite Mining on vegetation**

Out of 660.749ha. of forest land proposed for diversion, only 390.26ha. will be utilized for mining and ancillary activities where as 270.489ha. of forest land interspersed within the mining blocks will be protected and conserved at project cost. There is sparse vegetation on the mineralized plateau. Around 50,000 trees will be affected over the entire life of the project while 16,00,000 trees will be planted by way of compensatory afforestation and reclamation. Concurrent reclamation of the mined out areas with indigenous species in a scientific manner will provide livelihood support to the local tribals. Green belt will be developed in peripheral barrier and vacant space in infrastructural development area will add to the vegetation cover of the area.

**(ii) Loss of wild life habitat affecting their population structure**

The proposed area is neither a wild life sanctuary, nor a National Park, nor a biosphere nor an ecologically sensitive area. It is a forest with flora and fauna like many other sites in Orissa where active mining is going on for iron ore, coal or manganese under different regulatory conditions. The State Government has prepared a wildlife management plan and subsequently modified the same as per the observations made by the Wildlife Institute of India at a capital out lay of Rs. 50.53 crores to be implemented at project cost. The scheme proposes habitat conservation, fire protection and anti-poaching measures, eco-development, eco-tourism and public awareness activities etc. Special care has been taken in the scheme for management of nocturnal animals. The project proponent has also deposited the funds in the designated account of Adhoc-CAMPA in full.

**(iii) South Orissa Elephant Reserve- a linking corridor for Elephants in Orissa**

The South Orissa Elephant Reserve was conceived over 7713' sq kms for an estimated population of 179 elephants. This puts the figure at 43.09 sqkm per elephant against the national average of 3.04sqkms per elephant. There is no elephant movement in the proposed mining area. The site inspection report of MoEF dt. 2.5.2005 confirmed no

evidence of elephant movement in the project site. The mining area of 390.27 ha accounts of 1.5% of the Niyamgiri hill ranges spreading over 250 sqkms. In other words, at any given point of time only 0.05% of Niyamgir hill ranges would be subjected to mining activities which will have least impact on the pachyderms. Despite the above facts, all required measures have been prescribed in the wildlife management scheme for conservation and management of wildlife population in the project impact area.

**(iv) Impact of mining on the water regime- both surface water and ground water**

The extensive study conducted by the CMPDI reveals that the plateau top mining area has no streams except during the monsoon when streams are formed due to surface runoff. Ground water is not encountered even up to a depth of 50 meters from plateau top as observed during exploration by MECL. The tests conducted by CMPDI revealed absence of any aquifer below ground level. The mining activity will be limited to top 30 meters hence ground water would not be disturbed due to mining. During the post mining the mined out area shall be back filled with loose overburden which will allow percolation of water through it. These will facilitate recharge of ground water table within the mined out through a network of sumps. The springs are developed along the hilly slopes at elevation of RL 870 m (Western side) and RL 767 meters (Eastern side). In the post mining scenario, the seepage from the escarpment will increase with increased secondary porosity and flow from the streams originating will get improved. By constructing peripheral barrier to control siltation and preventing direct discharge of muddy water from active mining area, the quality of discharge from the streams will not get affected. As the mine operation will be carried out at a very high elevation, the proposed mining activity will have no impact on the aquifer in the plain area.

**(v) Impact of forest based economy of the Dongria kondh tribes**

The Dongria kondhs do not inhabit in the proposed mining site. This has been confirmed in the supplementary report of the WII, Dehradun and hence there will be no displacement of any tribals due to the proposed mining project. A tribal development scheme at an outlay of Rs. 12.20 crores has been prepared which aims at improvement of communication, drinking water, health and sanitation, education as well as livelihood option of backward tribal population. The funds for execution of the scheme has also been deposited by the project proponent in full.

- (b) After being satisfied with the facts and putting due mitigation, management and rehabilitation measures as non-negotiable conditions; the Hon'ble Supreme Court finally accorded its approval for the proposed Mining Project vide its orders dated 23-11-07 and 08-08-08. The relevant extracts of the order of the Hon'ble Supreme Court are re-produced below.

Order of Hon'ble Supreme Court dated 23-11-07

" x x x. If M/s. SILL State of Orissa and OMC Ltd. jointly agree to comply with the above Rehabilitation Package, this Court may consider granting of Clearance to the Project.

x x x. This Court is not against the Project in principle. It only seeks safeguards by which we are able to protect nature and subserve development. x x x"

Order of Hon'ble Supreme Court dated 08-08-08.

" 9. For the above reasons and in the light of the Affidavits filed by SILL, OMCL and State of Orissa, accepting the Rehabilitation Package, suggested in our Order 23-11-07, we hereby grant clearance – to the forest diversion proposal for diversion of 660.749 ha. of forest land to undertake Bauxite mining on the Niyaragiri Hills in Lanjigarh. The next steps would be for MoEF to grant its approval in accordance with law. x x x"

*Therefore, issues which have already been duly adjudicated upon by the Hon'ble Supreme Court should not have been re-opened by the MoEF due to the principle of resjudicata. Further there is no provision in the Forest Conservation Act/Rule stipulating for constitution of another Committee for making field visit and examining the matter afresh especially keeping in mind that the Forest Advisory Committee constituted under Section 3 of the Forest Conservation Act, 1980 has deliberated over the issues relating to this forest diversion proposal and the technical reports submitted to the MoEF and thereafter submitted its recommendation to MoEF on 27.10.2010 for according in-principle approval.*

- (c) In due compliance of the order of the Hon'ble Supreme Court, the MoEF had accorded its in principle (i.e. Stage-I) forest clearance on 11-12-08 mandating SILL, OMC Ltd. and the State of Orissa to comply to a set of terms and conditions including, most importantly, the Rehabilitation Package suggested by the Hon'ble Supreme Court to take care of the issues relating to 'Ecological and Human Costs of Mining'.
- (d) After due compliance of these terms and conditions, the State of Orissa requested MoEF vide its letter dated 10-08-09 to accord Stage-II forest clearance both for the



mining project and the conveyor corridor & mines access road. The compliance included the deposit of funds by the project proponent in respect of the following items in order to ensure conservation and protection of forests and wildlife in the area.

Sl. No.	Components	Amount
1	Cost of Compensatory Afforestation	Rs. 2,38,47,143/-
2	Maintenance of Safety Zone	Rs. 94,30,500/-
3	Cost of Afforestation over 1.5 times of Safety Zone area	Rs. 12,23,752/-
4	NPV of diverted forest land	Rs.55,00,00,000/-
5	Cost of Wildlife Management Plan	Rs.50,53,00,000/-
6	Cost of Tribal Development	Rs.12,20,00,000/-
	<b>Total:</b>	<b>Rs.121,18,01,395/-</b>

Besides the above, the project proponent has also paid an amount of Rs. 20.00 crores for the Special Purpose Vehicle constituted for scheduled Area development of the area. @ Rs. 10.00 crores each for the year 2007-08 and 2008-09.

*Therefore, re-opening these issues by MoEF at this stage after granting Stage-I (in principle) forest clearance itself, is improper and self-contradictory.*

- (e) Thirdly, in the Appeal No. 18, 19, 20 & 21 of 2009 in the National Environment Appellate Authority (NEAA) regarding Lanjigarh Bauxite Mining Project of M/s. OMC, the MoEF has furnished its reply on 19-10-09 as furnished below.

“ x x x

Issue iv: x x x. However, Ministry would like to submit that the project was granted Environmental Clearance by the Ministry, based on due diligence carried out, based on the Rapid EIA report and other documents/reports, reports of the study carried out in compliance to the directions of Hon'ble Supreme Court inter alia (i) Report on impact of proposed Lanjigarh Bauxite Mine on Biodiversity including wildlife and its habitat, (ii) Hydro-geological investigation of Lanjigarh Bauxite Mine and (iii) Soil Erosion study at the Niyamdangar Plateau submitted by the project proponent, and recommendations of the multi-disciplinary Expert Committee constituted in accordance with the provisions of the EIA notification, which had examined and considered these documents/reports. Further, it may be mentioned that the Wildlife Institute of India has undertaken biodiversity studies and based on the same a mitigation plan has been proposed. According to

this, at any point of time, not more than 20 ha. of area will be exposed for mining, which has already been stipulated as a specific condition no. (vi) in the clearance letter. x x x.

Issue vi: x x x. The Expert Appraisal Committee, an expert body comprising of multi-disciplinary experts having satisfied themselves had thereafter recommended the project and the MoEF had granted Environmental Clearance thereafter subject to implementation of various conditions and environmental safeguards as contained in the Environmental Clearance order.

Issue vii: x x x. The contents of this issue relate to religious and cultural value of the Niyamgiri Hills for the Dongaria Kandhas. In this context it is submitted that the project proponent have committed that as per the directions of the Hon'ble Supreme Court, the Scheduled Area Development of Lanjigarh Project will be undertaken by a Special Purpose Vehicle (SPV) including the State of Orissa. Xxx. Further, it was also stated that a comprehensive conservation-cum-development (CCD) plan for the Dongaria Kandhas, the Primitive Tribal Group, has been prepared by ST & SC Development Department, Govt. of Orissa for the period 2007-12. The SPV will dovetail the CCD plan with action plan based on the said report. 5% of annual profit before tax from Lanjigarh Project or Rs. 10 crores, whichever is higher, shall be deposited with the SPV for development of the scheduled area, which will inter-alia include health, education, childcare, women development, skills upgradation, infrastructure development, etc. xxx."

*Therefore, the MoEF should not contradict its stand on various aspect of this mining project, which are in stark contrast to its view earlier placed before the NEAA on dt. 19-10-09.*

- (f) By its order dated 15-9-10, the NEAA admits that matters already adjudicated upon by the Hon'ble Supreme Court cannot be re-opened by the NEAA. The relevant extracts of the order of the NEAA are re-produced below.

x x x

Para 2. x x x. The Authority heard the parties on the Review on 30-9-09, 19-10-09, 16-11-09, 17-12-09, 05-01-10, 21-01-10 and 15-02-10 and dismissed the Review Petitions by admitting the appeals for hearing on merits strictly on those issues of the Appeal which did not figure in any of the affidavits placed before the Hon'ble Supreme Court challenging the Bauxite mining in the said area.

x x x

Para 13(ii). In view of Hon'ble Supreme Court's Order dated 08-03-08 granting clearance for diverting 660.749 Ha. (the project site) of forest land to undertake mining of bauxite on the Niyamgiri Hills in Lanjigarh the only option left with this Authority is to examine whether EC suffers from inadequacy of safeguards.

x x x."

*Therefore, re-opening the issues of 'Ecological & Human Costs of Mining', 'Impact on Biodiversity', etc. by MoEF at this stage and rejecting the Stage-II forest clearance on these ground will not only be self-contradictory for MoEF; but may also be contemptuous of the orders of NEAA and the Hon'ble Supreme Court of India.*

**(5) Violation of the FC Act'1980**

- (a) It is alleged that the Alumina Refinery Project has violated the FC Act'1980 by illegally occupying 26.123 Ha. of village forest (Gramya Jungle Jogya) land by enclosing it within the factory premises and thereby denying access to the villagers. MoEF views it as an act of total contempt of the law by the Company, an act of willful concealment of information by the Project Proponent and act of appalling degree of collusion on the part of the concerned officials.

**This allegation is factually incorrect.** When the Alumina Refinery Project (Vedanta Alumina Limited) decided to withdraw their application for diversion of 58.943 Ha. of forest land, the State Government had sent a letter to the MoEF on 27-03-05 (Annexure-I) requesting MoEF to consider the withdrawal proposal of User Agency clarifying that the entire village forest land of 28.943 ha (Gramya Jungle Jogya) within the Alumina Refinery area shall not be utilized by the Project and shall be kept protected with watch and ward and shall be given free access to the villagers concerned. The MoEF vide its letters dated 28-03-05 (Annexure-II) had accepted the proposal of the State Govt. The IDCO and the Collector, Kalahandi were requested to comply with the stipulations/ commitment according to which FDP was considered by GoI for withdrawal.

- (b) As regards the allegation of illegal occupation of 1.11 acre (i.e. 0.45 Ha) Dangergahi village forest (Gramya Jungle Jogya) land, it is hereby clarified that Plot No. 157(P) measuring 1.0 acre and Plot No. 133 measuring 0.11 acre come on the path of the Mine Access Road. The company developed this road only on the non-forest patches. In this case, the said forest plots are left intact whereas on both sides the road has been developed upto a height of 3 meters on the non-forest patches. Hence it is not at all true that the company is in illegal possession of 1.11 acres of forest land. Further, this land is a part of 33.73 ha of forest land proposed for

diversion for laying conveyor corridor and mine access road for which Stage-II approval is awaited from Government of India, MoEF.

As per the alignment of this road a strip of forest land measuring maximum 15 mtr.(width) x 10 mtr.(Length) i.e. only 0.015 Ha. out of the total 1.11 acre (0.45 Ha.) will be required for the road purpose.

*Hence, the allegations of repeated violations of FC Act'1980 are false and baseless. Further allegations of State Government officials colluding with the Company and deliberate concealment of information are also false and baseless.*

*Besides, it may be stated that the Government of India, MoEF have rejected Stage-II clearance to the Bauxite Mining project of Orissa Mining Corporation by alleging violations of Forest Conservation Act, 1980 in the refinery project of VAL at Lanjigarh. The refinery project of VAL and bauxite mining project are two separate projects by two separate project proponents. The Govt. of India, MoEF have intermingled the two projects and rejected Stage-II forest clearance to the mining project of Orissa Mining Corporation Ltd., a State Government Undertaking by alleging violations of Forest Conservation Act in refinery project of VAL, a private entity. There is no tangible report of violations of Forest Conservation Act, in the mining project as no mining operation has started pending forest clearance. This rejection of Stage-II forest clearance by the Ministry will put the economic status of the State Government Undertaking in jeopardy as it can not fulfill its business obligations with VAL for supplying bauxite ore to the latter.*

#### **(6) Very Limited Relevance to the proposed Mining Project**

It is alleged that the mining activities in the proposed ML site will have limited relevance to the refinery now under six fold expansion (assuming that 6 MTPA of alumina product will require mining of 18 MTPA of bauxite) as the 72 million ton ore deposit here would last only about four years for the increased needs of the expanded refinery. Against this backdrop, there are the severe adverse consequences on the PTGs, environment, forests and wildlife that inhabit these forests.

**This allegation is again factually incorrect.** As it is widely known, a mine cannot operate without a Mining Plan duly approved by Indian Bureau of Mines (IBM) and Environmental Clearance duly issued by MoEF. In this case, the maximum production capacity of the mines is 3 MTPA of bauxite as per the IBM-approved Mining Plan as well as the EC granted by MoEF. The User Agency, OMC Ltd., has not filed any application either with IBM or MoEF to raise the capacity of the mines beyond 3 MTPA. At the rate of 3 MTPA, the mines is expected to last about 25 years which is of extreme relevance to the user agency and the project proponents.

(7) Violation of the EP Act' 1986

- (a) It is alleged that M/s. VAL has already proceeded with construction activity for expansion project from 1 MTPA capacity to 6 MTPA capacity without obtaining EC.
- (b) Questionable sourcing of bauxite by M/s. VAL in violation of conditions of EC.
- (c) Monitoring report of the Eastern Regional Office (of MoEF) dated 25-05-10.

It is learnt that the project proponent i.e. M/s. VAL has already furnished its reply to MoEF on (a), (b) and (c) above vide its letter dated 15-09-10 in response to the show cause notice issued by MoEF on 31-08-10. It is pertinent to mention here that the State Government has not accorded any permission for the expansion related construction activities. On the other hand, when the OSPCB knew about the construction activity for the expansion project, it directed M/s. VAL vide its letter dated 12-01-09 to stop all construction activities with immediate effect.

As regards the monitoring report of the Eastern Regional Office, some positive aspects of the Project as reported by the Eastern Regional office are re-produced below.

“ x x x. The CSR activity as reflected in the EMP for contributing to socio-economic development and as stipulated in this clearance (i.e. the EC) has been taken up by the project in true spirit. The project has made good beginning in this tribal dominated area, where the facilities are meagre. The Project is covering the aspects of health and sanitation, education, sport and cultural activities, encouraging sustainable livelihood options like Self-Help Groups, Pisciculture, tailoring, straw-berry cultivation, etc. It is reported that creation of infrastructure development and the above socio-economic programmes has benefited the people of the area. Some areas where CSR programmes are being implemented by the industry for community welfare and development in Lanjigarh region including the programmes being implemented by Lanjigarh Project Area Development Foundation (LPADF) are worth-visiting. Rs. 20 crores has been deposited by the project in LPADF.

M/s. VAL has also started following programmes for the health, sanitation and education purpose.

- Vedanta Balchetana Anganwadi Project in 6 Blocks of Kalahandi and 5 Blocks of Rayagada to improve nutritional status of children in age group of 0-6 years, immunization and pre-school Anganwadi Programmes.
- Mid Day Meal Project by providing state of art fully automatic kitchen facility to supply nutritional food to 20,000 children from 273 schools. The facility is ready for commissioning.
- Lanjigarh hospital project to support the communities by providing more facilities in the hospital.

- Mobile health unit for providing free medical service for local people covering 87 villages in Kalahandi and Rayagada districts.
- Project 'Jibika' and Project 'Sashakti' to empower tribal women with the improved livelihood.
- Project 'Ujjala' to provide electricity infrastructure in the villages covering 750 households in Lanjigarh Block.
- Project 'Trupti' for safe drinking water in 200 households of 10 villages of Lanjigarh Block.
- Project 'Kuteer' provides roofing with GI sheets in 300 households of 17 villages in Kalahandi district.

The project has been doing good work and a total of Rs. 32 crores has been spent in CSR activities in addition to Rs. 17 crores spent on local infrastructural development.

xxx. CSR activities carried out by the project in the villages are noteworthy. The project may consider taking up more villages for demonstration for increasing the agriculture productivity by adopting new methods of crop cultivation including good varieties of seeds, changing the cropping pattern and improving the overall livelihood of families. x x x."

*This independent monitoring report of the Eastern Regional Office, MoEF clearly shows how the project has gone beyond the Rehabilitation Package suggested by the Hon'ble Supreme Court and made a tremendous positive impact on the life and livelihood of the local people, including the tribals and PTGs.*

**(8) Violation of Forest Rights Act'2006:**

- (a) The following allegations have been made with respect to violation of Scheduled Tribes & Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006.
- (i) The area proposed for mining and the surrounding thick forests are the cultural, religious, and economic habitat of the Kandha PTGs. Discouraging and denying the claims of the PTGs without the due process of law is illegal.
  - (ii) It is apparent that there has been a serious failure to implement these specific provisions of the FRA to protect the culture, livelihood and rights, including 'community tenure of habitat and habitation' as specified in the FRA of people belonging to the Dongaria Kandhas and Kutia Kandha tribes which are both PTGs.
  - (iii) Primitive Tribal Groups were not consulted in the process of seeking project clearance.
  - (iv) Even if the DPs have no claims under the FRA the truth of their de-facto dependence on the Niyamgiri forests for the past several decades can be ignored by the Central and State Governments only at the cost of betrayal of the promise of inclusive growth and justice and dignity for all Indians.

(b)

In this regard the following points are worth mentioning.

The Forest Rights Act was enforced w.e.f. 1.1.2008 following notification of relevant Rules. However, the first writ petitions bearing Nos. 564, 571 and 579 challenging this mining project had been filed before the CEC in Nov'2004 i.e. much before the FRA was made enforceable. The subsequent writ petition bearing no. WP(c) NO. 549 of 2007 by one Siddharth Nayak was filed in the Hon'ble Supreme Court on 25-09-07 i.e. much before the FR Rules were promulgated wherein the petitioner had made a prayer to the Hon'ble Supreme Court not to permit mining in Niyamgiri Hills as that would be in gross violation of various provisions of the FRA'06. The applicant pleaded with the Hon'ble Supreme Court of India not to permit mining in Niyamgiri hills as that would be violative of Forest Rights Act, 2006 on the following grounds.

- That the Dongria Kondhs treat the Niyamgiri hill and especially the top of the hill as the abode of Niyam raja, their God. Therefore, if mining is permitted on the hill top, the entire hill top will be blasted and their sacred abode will be destroyed permanently. This will be in blatant violation of fundamental cultural and religious rights including their right to freely profess, practice and propagate religion enshrined under Article 25 of the Constitution.
- That the cultural, ecological and social dependence of Dongria Kondhs on Niyamgiri Hills is being undermined for short term economic gain. This blatant discriminatory treatment by the state against the tribals is violative of their right to equality and equal protection under the law as enshrined in Article 14 of the Constitution.
- That the desecration of sacred tribal ground, other than infringing their right to freedom of religion, also adversely affects their dignity and pride in their religio-cultural heritage and is therefore violative of the right to live with dignity guaranteed under Article 21 of the Constitution.
- That any mining on the top will have serious repercussions on the slopes where they reside and practice horticulture as it will involve blasting, excavation and dumping. In short, their Gods would be destroyed, their homes would be destroyed and they will not be able to practice horticulture anymore. This will result in the brazen violation of their right to life and their very existence.
- That the Niyamgiri RF is part of the customary boundary of the Dongria Kondhs. Section 2(a) of the Forest Rights Act defines 'Community Forest Resources' to include customary forest land within the traditional or customary

boundaries of the village or seasonal use of landscape in case of pastoral communities, including reserved forests, protected forests and protected areas such as Sanctuaries and National Parks to which the community had traditional access.

However, after a prolonged examination of the matters spanning around three years and scrutinizing all claims and counter-claims the Hon'ble Supreme Court accorded its approval to the project vide its order dt. 23.11.2007 and 8.8.2008 already mentioned at para 4(b).

Being aggrieved by the order of the Hon'ble Supreme Court dt. 23.11.2007, the petitioner Sri Siddharth Nayak filed a review petition in the Hon'ble Supreme Court of India on 20.12.2007 bearing RPO No. 100 of 2008 praying the Hon'ble Supreme Court to review its dt. 23.11.2007(annexure-IV). The Hon'ble Supreme Court however, dismissed the petition vide its order dt. 7.5.2008 with the following observation.

“ We have carefully gone through the review petition and the annexures thereto. We find no merit therein. Hence the review petition is dismissed.”(Annexure-V):

In view of the fact that the Hon'ble Supreme Court has given the above-stated orders after considering the petition of Siddharth Nayak in WP(c) No. 549 of 2007 wherein the petitioner had prayed for not allowing the bauxite mining project in Niyamgiri Hills for being violative of various provisions of the FRA'06, and further considering the fact that the subsequent review petition filed by Siddharth Nayak was also dismissed by the Hon'ble Supreme Court vide its order dated 7.5.2008, *the desirability of the bauxite mining project in Niyamgiri Hills cannot be questioned at this stage again on the ground of violation of various provisions of Forest Rights Act, 2006 as it will tantamount to direct violation of the order of the Hon'ble Supreme Court.*

(c) The other allegation that Primitive Tribal Groups were not consulted in the process of seeking Project Clearance is not true. The Forest Rights Act, 2006 was enforced on 1.1.2008 and the PESA Act'96 was enacted on 24-12-96. Section 4(i) of the PESA Act reads as follows;

“ The gram sabha or the Panchayats at appropriate level shall be consulted before making the acquisition of land in the scheduled areas for development projects and before re-settling or rehabilitating persons affected by such projects in the Scheduled Areas; the actual planning and implementation of the projects in the Scheduled Areas shall be co-ordinated at the State Level.”As per the provisions under the PESA Act, consultation with the Gram Sabhas had



been done and approval of the Panchayats at appropriate level had been taken in 2002 before acquiring land of PTGs and others for the Alumina Refinery Project at Lanjigarh. The Gram Sabhas had been attended by PTG members belonging to Kutia Kandha tribe. With regard to the bauxite mining proposal, no private land was to be acquired. The entire ML area consists of forest and non-forest land belonging to Government. There was no provision under any Act to seek project clearance from the PTGs for projects not requiring any private land. However, as per the EP Act'1986, while seeking environmental clearance for the mining project, public hearing had taken place in 2003 in Kalahandi and Rayagada districts for consultation with the public including the PTGs. Hence it is not true that no consultation was made with the PTGs while seeking project clearance.

- (d) Now coming to the issue of the process of verification and recognition of claims about forest rights and vesting of forest rights, it may be pertinent to mention here that Orissa has emerged as the leading State in this regard in the entire country. As far as launching special campaigns (for generating wide-spread awareness about community rights) is concerned, Orissa is being cited as a 'Model' by none other than the Ministry of Tribal Affairs, Govt. of India who is the 'Nodal Agency' for the implementation of the provisions of the Forest Rights Act, 2006. The letter dated 20-7-10 of Ministry of Tribal Affairs addressed to Chief Secretaries of all the States and the status report on implementation of Forest Rights Act as on 31-8-10 prepared by the Ministry of Tribal Affairs bears testimony to this. Hence the serious intent of the State Government in implementation of the FRA'06 in the entire State should not be questioned. It may be mentioned that the MoTA vide their letter dt. 19.11.2010 and 4.10.2010 had asked the State ST&SC Development Department to furnish their comments in the matter of violations of Forest Rights Act as alleged in the NC Saxena committee's report. The State ST&SC Development Department, the Nodal Department in the matter of implementation of Forest Rights Act in the State, has submitted a detailed report to the MoTA vide their letter dt.10.12.2010 wherein it has amply been clarified that complete exercise of identification and settlement of forest rights of both the individuals including the PTGs and communities in the district of Kalahandi and Rayagada, where the project area falls, has been done. The pending claims on forest rights settlement for the area around the project site and beyond are now being processed for disposal in accordance with the law. The copy of the ST&SC Development Department in the address of MoTA indicating detailed compliance of provisions of Forest Rights Act is enclosed herewith for reference.

(e) Having stated so it may be mentioned that the FRA'06 and its Rules are newly enacted and hence are at the evolving stage. There are many relevant issues which have not been addressed to by the FRA or its Rules. For example, the Forest Rights Act and its Rules and also the circular issued by MoTA and MoEF are silent on the following aspects.

- (i) Whether calling for claims and receiving the same are never-ending processes or have any specified time line. What happens if claims are received beyond the time line.
- (ii) Whether after vesting of forest rights of a particular forest area on STs and/or OTFDs; the same forest area can be diverted for non-forest use by developmental projects or not. (the FRA provides for such diversion only for facilities managed by the Government)
- (iii) What is the procedure for diversion of such forest land after the vesting of forest rights?
- (iv) If diversion of such forest land is permissible, whether the vested forest rights need to be compensated for and if yes, how? Is there any norm to compensate such forest rights?
- (v) If the forest land proposed to be diverted for non-forest use is situated inside Reserved Forests/PRF where all right have already been settled and which does not fall in jurisdiction of any Gram sabha, consent of which Gram sabha will be essential and up to what distance as the GoI, MOEF circular dt. 3.8.2009 does not clarify this aspect.
- (vi) Whether Govt. of India, MOEF circular dt. 3.8.2009 supersedes PESA Act., 1996 as PESA Act provisions states for consultation with Gram sabha but Govt. of India, MoEF circular asks for consent of the Gram sabha.

So far no guideline has been issued either by the Nodal Ministry i.e the Ministry of Tribal Affairs or by MoEF clarifying these above-stated issues. The circular dated 03-08-09 of MoEF only prescribes a format as per which the State Govt. is to certify that the provisions of FRA'06 have been duly followed. The circular is silent on the above-stated issues.

It is quite understandable that there are bound to be such issues in any new Act/Rules that comes into implementation. In the absence of guidelines, the same Act/Rules may be interpreted in different manners by different people. The burning example is the National Rural Employment Guarantee Act (MGNREGA), which though enacted in Feb'2006, is yet to be properly understood and implemented in true spirit even after passage of more than 4 years since its enactment and issue of hundreds of clarifications/guidelines by the Ministry of Rural Development since then. *The field functionaries should therefore be given adequate exposure in terms of guidelines, workshops, field visits in order to ensure implementation of law in a better manner.*

### Conclusion.

The Project is of utmost importance to the socio-economic development of Kalahandi and Rayagada districts, one of the poorest areas of the country. It can usher in a sustainable development leading to improvement of livelihood of thousands of people, vast majority of them belonging to BPL category. Concerns regarding impact on Ecology, Biodiversity, Tribal life especially that of the PTGs, Wildlife, etc. can be properly addressed to and can be suitably mitigated by adopting the 'Rehabilitation Package' suggested by none other than the Hon'ble Supreme Court of India. The allegations of violations of FC Act, EP Act and FR Act are all baseless as have been suitably explained in the letter which would be appreciated by the MoEF. The State Govt. of Orissa is committed about the well-being of its people, especially tribal people with special emphasis on PTGs. This Project, having the potential of being the biggest change agent for development of this impoverished area, has all along been supported by the MoEF while according in-principle forest clearance and environmental clearance. These clearances were based on the recommendations of the Forest Advisory Committee of MoEF, orders of Hon'ble Supreme Court in the matter of mitigating forest and wildlife issues as well as protection of tribal rights.

In view of this, the State Government sincerely requests that Government of India, MoEF may consider all aspects of the project explained above and withdraw its order dated 24-08-10 rejecting the Stage-II Forest Clearance for the proposed Bauxite Mining Project in Niyamgiri Hills. Simultaneously Government of India, MoEF may also withdraw their order making the Environmental Clearance for the mining project granted 28-04-09 in-operable. As regards to settlement of forest rights claims, it may be stated that no irreversible damage or loss has happened yet as the said forest area is yet to be diverted for the project.

In a case MoEF desires to impose any more additional conditions for ensuring compliance on any of the aspects relating to the mine/refinery project, it may do so for compliance by the State Government/User agency.

*H/mexure-2(E)*



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Ref: SIIL/MK/MoEF/10/001



December 4<sup>th</sup> 2010

The Director General - Forests,  
Ministry of Environment & Forests,  
New Delhi

**Sub: Compliance to Hon'ble Supreme Court order dated 23<sup>rd</sup> November 2007 in IA no. 1324 & 14748 & 8<sup>th</sup> August 2008 in IA no. 2134 on Niyamgiri Bauxite mining Project.**

Dear Sir,

We would like to bring to your kind attention that the above case was heard in the Hon'ble Supreme Court and an interim judgment was given on 23<sup>rd</sup> November 2007 in which Hon'ble Supreme Court concluded as follows:

***"If M/s. SIIL is agreeable to the afore stated rehabilitation package then they shall be at liberty to move this court by initiating a proper application. This court is not against the project in principle. It only seeks safeguards by which we are able to protect nature and subserve development."***

As the rehabilitation package suggested by the Hon'ble Supreme Court was acceptable to SIIL, an affidavit to this effect was submitted by us with the Hon'ble Supreme Court for final clearance of the matter. Accordingly, Hon'ble Supreme Court has finally cleared the project on 8<sup>th</sup> August 2008 and directed as follows:

***" We have tried to strike a balance in order to subserve the principle of sustainable development. Under our order we suggested rehabilitation package under which apart from NPV, SIIL is also required to deposit 5 % of Annual Profits before tax and interest from Lanjigarh Project or Rs. 10 Crores per annum whichever is higher. The said project covers both mining and refining. The amount is required to be deposited by SIIL with SPV every year commencing from 01.04.2007. This condition has been accepted by SIIL....."***

.....For the above reasons and in the light of the affidavit filed by SILL, OMCL and State of Orissa accepting the rehabilitation package, suggested in our order 23.11.2007, we hereby grant clearance to the forest diversion proposal for diversion of 660.749 Hectare of forest land to undertake bauxite mining on the Niyamgiri Hills, in Lanjigarh. The next step would be for MOEF to grant its approval in accordance with law."

In line with the above orders of Hon'ble Supreme Court, MOEF vide their letter No - 8-23/2005-FC dated 11.12.2008, granting in principle clearance to the forest diversion proposal in the Niyamgiri mines, had directed that SILL shall deposit 5% of the annual profits before tax and interest from Lanjigarh Project or Rs10 Crores, whichever is higher, as contribution for scheduled area development. It was also specified in the said letter that this contribution is to be made every year commencing from 01.04.2007. Accordingly, SILL has deposited a sum of Rs. 20 Crores as contribution for scheduled area development for the year 2007-08 and 2008-09 in the SPV "Lanjigarh Project Area Development Foundation" formed by Government of Orissa under section 25 of Companies Act, 1956. It would not be out of context to mention here that in compliance with the letter dated 11.12.008 of the MOEF issued pursuant to the order of the Hon'ble Supreme Court order, SILL had also deposited Rs. 55 Crores towards NPV, Rs. 50.53 Crores towards wild life management, Rs. 12.20 Crores towards tribal development besides bearing other associated cost like compensatory afforestation cost. However, MOEF vide its order dated 30<sup>th</sup> August 2010 has rejected the formal forest clearance to the bauxite mining project at Niyamgiri Hills as envisaged in the MOEF letter dated 11.12.2008 issued pursuant to the order of Hon'ble Supreme Court.

Since the order of the Hon'ble Supreme Court was with the objective of undertaking mining in Niyamgiri Hills for ensuring inclusive growth by balancing development vis-à-vis protection of wildlife, ecology and environment in view of the principles of sustainable development, and MOEF has subsequently declined the formal forest diversion clearance though granting the in-principle clearance earlier, we request MOEF to kindly advise on further contribution by SILL for the year 2009-10 and for subsequent years.

In this connection we would like to bring to your kind attention that the SPV utilizing the contribution made by SILL has undertaken large number of projects for the development of Health, Education, Communication, Irrigation and Agriculture of the said scheduled




area within a radius of 50 KM as directed by the Hon'ble Supreme Court in its order dated 08.08.2008. A list of projects already approved by the SPV and under various stages of implementation is attached as annexure- **II (F)**.

Upon receiving response from MOEF on the above, we shall take appropriate action on further contributions at our end.

Thanking you,

Yours faithfully,

**For Sterlite Industries (India) Ltd.**

  
**(Dr. Mukesh Kumar)**  
**President**



Encl: As above.

CC: 1. Secretary, MOEF, Govt of India, New Delhi.

- ✓ 2. Chief Secretary, Government of Orissa, Bhubaneswar,
3. Chairman, LPADF & RDC, Southern Division, Berhampur, Orissa.
4. Director, LPADF & Collector, Kalahandi, Orissa.
5. Director, LPADF & Collector, Rayagada, Orissa.
6. MD, OMC, Bhubaneswar.

## PROJECT DETAILS:

## LIST OF APPROVED PROJECTS:

## KALAHANDI:

SI No.	Project Details	Amount (Crores)	Area	District
1	Lanjigarh Hospital	3.00	Lanjigarh	Kalahandi
2	Health Facility	0.10 0.10 0.10	Jugsaipatna Pahadpadar Biswanathpur	Kalahand
3	Water Supply Scheme	1.30	Lanjigarh	Kalahandi
4	Water Supply Scheme	0.45	Biswanathpur	Kalahandi
5	Upgradation of Tribal School in Lanjigarh Block	1.80	Lanjigarh	Kalahandi
6	College Boundary	0.20 0.10	Lanjigarh T.Rampur	Kalahandi
7	Upgradation of Electrical System	1.00	Lanjigarh & Biswanathpur	Kalahandi
8	High Level Bridge	0.60	Bijepur & Trilochanpur	Kalahandi
9	Link Road	0.40	Borapadar to Perumanjhi	Kalahandi
10	Bus Stand	0.50	Bhawanipatna	Kalahandi

	Development			
11	Land Irrigation Project	0.20	Lanjigarh Block	Kalahandi
12	Science lab	0.75	5 Schools at Lanjigarh block	Kalahandi
13	Development of Govt Girls high School	0.15	Lanjigarh	Kalahandi
14	Development of Lanjigarh College	0.20	Lanjigarh	Kalahandi
15	Vegitable Development Project	0.40	Lanjigarh Block	Kalahandi
16.	Malaria Eradication Project	0.60	Lanjigarh Block	Kalahandi

TOTAL

12.05 Crores



RAYAGADA :

Sl No.	Project Details	Amount (Crores)	Area	District
1	Hospital development	0.30 0.20 0.15	Muniguda Bissam Cuttack Chandrapur	Rayagada
2	Water Supply Scheme	1.30	Ambadala	Rayagada
3.	Water Supply Scheme	0.40	Bisamcuttack	Rayagada
4	Water Supply Scheme	0.30	K.Singhpur	Rayagada
5	Developmental work	0.10	Khambesi Education Trust & Dev Centre	Rayagada
6	Development Work	0.20	Infrastructure Development of Chatikuna Center	Rayagada
7	Development Of College Science Lab	0.15 0.15	Muniguda Ambodala	Rayagada
8	Hostel Facility	0.30	Rayagada Womens College	Rayagada
9	Electricity Developmenmt	0.15 0.30 0.05	Muniguda Solar Lights in Dongia Kondh Area Paik Sahi Amodala	Rayagada
10	High Level Bridge	0.60 0.25 0.25	Baburguda to Pinda Kalyansinghpur River Nagabali	Rayagada

11	Science Lab	0.30	At 2 School	Rayagada
12	Vegitable Development Project	0.20	Tribal Area, Rayagada	Rayagada

TOTAL

5.65 Crores

- ❖ Total Projects sanctioned for both the districts. ... (12.05 + 5.65 )Crores = Rs.17.70 crores.
- ❖ The balance projects for approximately Rs.13.00 crores will be sanctioned in the next Board meeting to be held on 10<sup>th</sup> November'2009 at Bhawanipatna.

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**MINUTES OF THE THIRD SITTING OF THE STANDING COMMITTEE ON SOCIAL JUSTICE AND EMPOWERMENT HELD ON TUESDAY, 20<sup>TH</sup> DECEMBER, 2011**

The Committee met from 0930 hrs. to 1015 hrs. in Committee Room 'D', PHA, New Delhi.

**PRESENT**

**SHRI DARA SINGH CHAUHAN - CHAIRMAN**

**MEMBERS  
LOK SABHA**

2. Shri Kameshwar Baitha
3. Shri Devidhan Besra
4. Smt. Rama Devi
5. Dr. Manda Jagannath
6. Shri Dinesh Kashyap
7. Shri G. V. Harsha Kumar
8. Shri Basori Singh Masram
9. Shri R. Dhruva Narayana
10. Shri Ramashankar Rajbhar
11. Shri Pradeep Kumar Singh
12. Shri Lalit Mohan Sulabaidya

**MEMBERS  
RAJYA SABHA**

13. Smt. Jharna Das Baidya

**LOK SABHA SECRETARIAT**

1. Smt. Anita Jain - Director
2. Shri P.C. Choulda - Deputy Secretary

2. At the outset, Hon'ble Chairman welcomed the Members to the sitting of the Committee and apprised them that the sitting had been convened for consideration and adoption of the draft 18<sup>th</sup> Report on Action Taken on 10<sup>th</sup> Report on the subject "Implementation of Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006- Rules made thereunder".

4. The Committee then took up for consideration the draft 18<sup>th</sup> Report and adopted the same with some additions. The Committee authorized the Chairman to finalize the draft Report and present the same to Parliament.

*The Committee then adjourned.*

## APPENDIX

### ANALYSIS OF ACTION TAKEN BY THE GOVERNMENT ON THE RECOMMENDATIONS CONTAINED IN THE TENTH REPORT OF THE STANDING COMMITTEE ON SOCIAL JUSTICE AND EMPOWERMENT (FIFTEENTH LOK SABHA)

	Total	Percentage
I. Total number of Recommendations	23	
II. Observations/Recommendations which have been accepted by the Government: (Paragraph Nos. 1.9, 1.43, 1.44, 1.74, 1.75, 1.76, 1.77, 1.79, 1.80, 1.97, 1.99 and 1.104)	12	52.17%
III. Observations/Recommendations which the Committee do not desire to pursue in view of the replies of the Government: (Paragraph No. 1.47)	1	4.35%
IV. Observations/Recommendations in respect of which replies of the Government have not been accepted and have been commented upon by the Committee in Chapter I (Paragraph Nos. 1.45, 1.46, 1.81 and 1.83)	4	17.39%
V. Observations/Recommendations in respect of which replies of the Government are interim in nature: (Paragraph Nos. 1.41, 1.42, 1.78, 1.82, 1.96 and 1.103)	6	26.09%