

F.No.23011/11/2013-FRA  
Government of India  
Ministry of Tribal Affairs

R.No.F-281; August Kranti Bhawan,  
Bhikaji Cama Place, New Delhi.  
Dated: 14<sup>th</sup> December, 2015

To

The Additional Commissioner (T.D.),  
Tribal Development Department,  
Himachal Pradesh,  
Bijlani House,  
Chhota Shimla – 171002

**Subject: Clarification under Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 – Regarding.**

Sir,

I am directed to refer to your letter No.TBD.F(TDM)1 – 1/2007-XXVI dated 17<sup>th</sup> November, 2015 on the above subject and to render clarifications on the points raised therein ad-seriatim as under:

Sl.No.	Clarification sought	Clarification provided
1.	Whether diversion of forest land can be sought u/s 3(2) of the Act exclusively, without getting clearance under FCA, 1980?	Yes. No permission is required under the Forest (Conservation Act), 1980, since the FRA frees the forest rights of all encumbrances and procedural requirements of the 1980 Act in terms of Section 4(7) of FRA. However, such developmental facilities must fulfill the conditions under Section 3(2) of the FRA, namely (i) the facilities are managed by a Government; (ii) diversion of less than one hectare of forest land is involved; (iii) cutting of not more than 75 trees; (iv) recommendation of the Gram Sabha and; (v) limited to the 13 items listed under Section 3(2) of the FRA.
2.	Whether diversion of forest land under the Act can be sought/given only in those area where forest dwellers reside or where their rights have been settled?	Forest Rights Act applies on all forest land and wherever forest dwelling STs and OTFDs are present as per the definition in FRA. Diversion of forest land for the facilities (managed by the Government) need to be provided to the eligible forest dwellers and need

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		not wait till the recognition and vesting of rights is complete.
3.	Whether provision of sub section 2 of section 3 of the Act can be invoked independently or will they be invoked in areas where provisions of sub-section 2 of Section 3 of the Act can be sub-section 1 of the same section of the Act are complied with?	Development facilities under Section 3(2) can be extended in parallel or independently of the process of recognition of rights under Section 3(1). Clearances of development project under Section 3 (2) is subject to the condition that the same is recommended by the Gram Sabha. It however needs to be ensured that no rights are affected or any forest dweller is evicted due to diversion of forest land till the recognition and verification process under FRA is complete. Therefore while obtaining recommendation of the Gram sabha for diversion of forest land under Section 3 (2), it may also be obtained in writing from the Gram sabha that no rights under are likely to be affected by such diversion.
4.	Whether the rights which have already been settled and recorded in the record of rights in Wazib-ul-Arj and also in the forest settlement should be settled again as per the Act and recorded as community rights?	The FRA under Section 3(1)(j) and (l) provide for recognition of forest rights recognized under any State law or which are accepted as rights of tribals under any traditional or customary law of the concerned tribes of any State. Therefore, rights already recognized under Wazib-ul-Arj if it is under the meaning of section 3(1)(j) and section 3(1)(l) of FRA, should be recorded as community rights. However, rights under the said Wazib-ul-Arj, may be concessions given to communities such as for collection of Minor Forest Produce. This under FRA has been recognized as ownership rights of MFP which needs to be accordingly recognized. Similarly, rights recognized under Section 3(1)(i) of FRA provides for rights to protect regenerate or conserve manage any community forest resource which they have been traditionally protecting and conserving for sustainable use. These rights are also required to be recognized under FRA. Modifications

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		have to be now made in the record of rights and titles have to be issued to the individual as well as to the community as mandated under FRA.
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2. This issues with the approval of the competent authority.

Yours faithfully,



(Roopak Chaudhuri)  
Deputy Secretary to the Government of India  
Tel.No.011-26182428