

Appeal to India and UN on indigenous forest communities' rights

We appeal to India and to competent UN organs to guarantee India's vulnerable indigenous forest communities' rights on lands, forests, biodiversity and ecosystems on which they live and which they have sustained. These sustainable indigenous sources of forest life and biodiversity which secure life of vulnerable forest communities shall not be destroyed by mines, dams, timber, monoculture plantations or other commercial land use.

India has recognised by its Forest Rights Act (FRA) the rights of forest communities to live by their customary use of forests where they have lived or which they have used - which covers more than half of India's forests - and from which they shall not be forcibly displaced. They have also a right to protect, conserve, regenerate and manage for their sustainable use the forests they have sustained as their Community Forest Resource, CFR.(1)

While so far only 1,2% of such forests are recorded for communities in compliance with the Act since it came to force 8 years ago (2), India's Ministry of Environment, Forest and Climate Change, MoEFCC, violates the Act even further by a guideline to lease for private business vast majority of such relatively biodiverse 'open' forests mainly sustained and inhabited by communities. Their biodiverse forests are increasingly diverted for mining, industries or monoculture plantations - none of which sustains biodiversity or low-emission life. Still the Ministry falsely assumes commercial plantations to 'compensate' the loss of biodiverse forest and carbon bound by it.

Such corrupt system, expanded by Compensatory Afforestation Fund (CAF) Bill, undermines forest biodiversity and its sustainably self-renewable carbon stocks where diverse wild trees, plants and animals need each other to regenerate (3) compliant to how forests survive in indigenous communities. Such self-renewable biodiverse carbon stocks shall not be displaced by measures that are titled 'compensatory afforestation', 'conservation' or 'emission reductions' but are currently allowed to lead to diverse carbon-emitting side-effects that are left unmeasured - making profitable such 'emission reductions' whose overall impacts can increase emissions by top-down business approaches like CDM, REDD+, GIM, CAMPA or CAF, facilitated by JFM bureaucracy. (4)

By such measures the government violates India's biodiversity commitments and rights of forest communities and Particularly Vulnerable Tribal Groups who live by wild and cultivated biodiversity (5) maintained by their customary sustainable use, ways of life, indigenous knowledge and occupations such as wild food gathering, shifting cultivation, bamboo work, etc. Though people could thus live by regeneration of biodiverse forests the MoEFCC however chooses to call such biodiverse forests 'degraded' in order to replace them by much more biodiversity-degrading monocultures (6) and to boost mining, dams, tourism, forest clearance, privatisation, etc.

We appeal to India and to competent UN organs thus to prevent India from forcibly displacing its tribal forest communities and the vast indigenous biodiversity they have sustained as their means of survival and to ensure that India respects its following obligations and commitments on their rights on subsistence, biodiversity, home, tenure, survival and self-rule of their life-heritage, to protect them against all that violates these their rights (7):

1. "In no case may a people be deprived of its own means of subsistence" and thus also "indigenous peoples have the right [...] to be secure in the enjoyment of their own means of subsistence" and to "engage freely in all their traditional [...] economic activities". (8)

India is obliged to "granting a secure and inalienable right to those communities whose right to life depends on right to forests" (9) by which they subsist. Depending on forests" as "traditional forest dwellers who are integral to the very survival and sustainability of the forest ecosystems" they have to be secured their "traditional rights customarily enjoyed" with their community's "authority for sustainable use, conservation of biodiversity". (10)

"Indigenous and local communities depend directly on biodiversity and its customary sustainable use and management for their livelihoods, resilience and cultures and are therefore well placed [...] to efficiently and economically manage ecosystems". (11) Government thus "shall [...] protect and encourage customary use of biological resources in accordance with traditional cultural practices that are compatible with conservation or sustainable use" - indicated by customary land tenure and traditional occupations (12) like gathering or shifting cultivation and its fallows which sustain wild and cultivated biodiversity characteristic to the area and its life.

Government has to "empower indigenous and local communities [...] who depend directly on biodiversity" and support their "community-based management, customary sustainable use and community governance of biodiversity" and its conservation. (13) It has to secure customary "land tenure in the traditional territories of indigenous and local communities", to support indigenous biodiversity (14) and "Community-Based Monitoring" (15) of the human rights status of "traditional occupations related to conservation and sustainable use". (16)

2. For people "who depend on the forests and forest lands for bona fide livelihood needs" India has to secure "tenurial and access rights" "to hold and live in the forest land" compliant to how they have traditionally used the land under their "occupation for habitation or for self cultivation" "ensuring livelihood and food security".(17)

To correct discriminatively "high level of hunger and malnutrition among indigenous peoples" States shall

"support indigenous peoples' occupations, traditional subsistence activities, economies, livelihoods, food security and nutrition" (18) as adapted to specific indigenous wild and cultivated biodiversity - and to promote:

- "efforts of indigenous and local communities" on "maintenance and recovery of viable populations of species" of indigenous biodiversity "in the surroundings where they have developed their distinctive properties" and "in situ conservation of wild crop relatives and wild plants for food production, including in protected areas" (19)

- "diverse farming systems that enhance the sustainable use" also "in maintaining soil fertility and in combating diseases, weeds and pests" (20) - like also shifting cultivation does by fire and rotational fallows (21) and by "expanded use of local and locally adapted crops, varieties and underutilized species" that broaden "the range of genetic diversity available to farmers" and "reduce crop vulnerability and genetic erosion". (22)

India violates all such its commitments by expanding monoculture and other industrial/commercial plantations which displace vulnerable indigenous forest communities and divert wide biodiversity they sustain. It does not help if India calls this its destruction of indigenous biodiversity as 'reforestation'.(23) India has thus to take into account that "forests are more than trees and are fundamental for food security", livelihoods and "resilience of communities by providing food, wood energy, shelter, fodder and fibre" - as the WFC reminded (24) - and that:

- "Indigenous communities affected by [...] the expansion of commercial plantations" must be secured their rights "to own, use, develop and control the lands" which they "possess by reason of [...] traditional occupation or use" like "land used by indigenous groups for foraging" "or land used in rotational agriculture, whereby land is left fallow [...] before people are allowed to return." States have to ensure "their access to this land" (25)

- "Indigenous peoples shall not be forcibly removed from their lands [...] without the free, prior and informed consent".(26) India shall not evict tribal communities but register their tenures and customary livelihood territory - also "community tenures of habitat [...] for primitive tribal groups and pre-agricultural communities". (27)

3. Vulnerable tribes' forced eviction for mining or other violations of their human rights, are not development but violate development that is a human right - like UN human rights authorities have noted on Orissa state's mining plans and on Niyamgiri hills. (28) Also India's Supreme Court judged in 2013 that vulnerable tribe's local village councils are authorised by the FRA to determine how mining affects their traditional rights and to reject Niyamgiri bauxite mining, such as Odisha Mining Corporation(OMC) & Vedanta Aluminium Ltd. joint project.(29)

Now Orissa state tries to set the OMC to mine there alone and then sell the bauxite to Vedanta - as if that would make difference.(30) But mining would badly affect traditional forest rights as defined by the communities and can not thus be legally approved before registration of area's all forest rights - on community forest resource, on "community tenures of habitat" for particularly vulnerable tribes or "any other traditional rights" of their forestlife. There is a particular duty to ensure that area's vulnerable Dongria and Kutia tribes can claim and get duly recorded all traditional rights of their forest life before any forest diversion or mining can be considered. (31) Vedanta and its subsidiary Balco Ltd. however continue to displace vulnerable tribes from their forests and violate their rights on life-heritage and biodiversity by expanding bauxite mines even in sanctuary corridors .(32)

This all violates also Indian Constitution under which the traditional tribal village council "shall be competent to safeguard and preserve the traditions and customs of the people, their cultural identity, community resources" and to decide plans that may affect community's life-heritage. (33) Government has to secure "cultural, social, economic and ecological elements associated with the traditional management systems of lands" of the communities "as they contribute to customary sustainable use" and "effective conservation of important biodiversity" also by "indigenous and community conserved" areas, "community protocols" and procedures.(34)

To conserve biodiversity 'in-situ', India shall "respect, preserve and maintain" "practices of indigenous [...] communities embodying traditional lifestyles relevant for the conservation and sustainable use" of biodiversity. (35) Communities sustain vast wild and cultivated biodiversity in-situ also in shifting cultivations and rotational fallows as areas which "they have been traditionally protecting and conserving for sustainable use" and which they have thus "right to protect, regenerate, or conserve or manage" as Community Forest Resource. (36)

India has to ensure the village council can "regulate access to community forest resources" without obstacles - also in sanctuaries - to protect community "from any form of destructive practices affecting their cultural and natural heritage", to "stop any activity which adversely affects the wild animals, forest and the biodiversity". (37)

India is thus obliged to "ensuring that the prior informed consent or approval and involvement of indigenous and local communities is obtained for access to genetic resources where they have the established right to grant" such access - compliant to their above-mentioned FRA-established right to control that access. (38) "For the protection of wildlife, forest and biodiversity" community "shall be free to develop its own" "conservation and management plan for community forest resources" and to set and guide village committee to implement it. (39)

India has to secure communities "prior and informed consent to or approval of, and involvement in, the establishment, expansion, governance and management of protected areas" which affect them and their "full and effective participation" and "application of traditional knowledge and customary sustainable use in protected areas" - which countries committed to promote under India's CBD Hyderabad CoP presidency. (40)

Communities who have lived with wild-life have right to continue their indigenous in-situ conservation of biodiversity compliant to their traditional knowledge. India needs to correct its conservation policy of randomly setting up Tiger Reserves, National Parks and Sanctuaries for tourism in forests inhabited by such communities, endangering people's lives and safety - in Buxa, Sundarbans, Kanha, Taroba and elsewhere. (41)

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Notes and references

1. The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, see particularly preface and sections 3(1), 4(2)(e), 4(5) and 4(8)

2. Rights and Resources Initiative, et al.; Potential for Recognition of Community Forest Resource Rights Under India's Forest Rights Act, July 2015, page 3, http://www.rightsandresources.org/wp-content/uploads/CommunityForest_July-20.pdf
Note that this estimation is based on the partial information available on CFR rights area recognized under six states (Gujarat, Karnataka, Maharastra, Odisha, Rajasthan and Tripura) out of fourteen states where FRA implementation has been taken up in a substantial manner, however the estimated CFR potential area has been considered for the all fourteen states. The fact that so many states have not been able to bring further the required legal registration process during the 8 years of the Act shows certain implementation deficiency - which would result to violation, if the concerned areas would be allowed to become captured for other commercial or private purposes of other people even before the forest rights of the forest dwellers of those areas have been duly recorded and implemented.

3. See Ministry of Environment, Forest and Climate Change, "Guidelines for participation of private sector in afforestation of degraded forests".

See also note/page 1 of our appeal's attached "ANNEX to Appeal to India and UN on indigenous forest rights" and the following links it presents:

- <http://www.hindustantimes.com/india-news/govt-to-allow-pvt-sector-to-manage-40-of-forests/article1-1389622.aspx>

- http://www.business-standard.com/article/pti-stories/1-84-lakh-hectare-of-forest-land-diverted-for-non-forest-use-115081301268_1.html#

- <http://indianexpress.com/article/india/india-others/dont-say-diversion-of-forest-land-say-reforestation-prakashjavadekar/#sthash.yzZ4ntxl.dpuf>

- <http://timesofindia.indiatimes.com/india/Odisha-tribals-lose-food-source-as-teak-plantations-deluge-their-forestfarms/>

articleshow/49038995.cms

4. See note 2 of the attached "ANNEX to Appeal to India and UN on indigenous forest rights " (pages 2 and 3)
5. For example in Burlabaru village of Kutia Kondh Particularly Vulnerable Tribal Group of Kandhamal district their shifting cultivation podu-fields were planted full of teak trees monoculture despite the FRA-recognition of the forest rights of Kutias on their podu-fields and fallows which sustain vast wild and cultivated biodiversity. This destruction of area's selfregenerating biodiversity by monoculture plantation was even presented as if it were a sanctuary expansion while the forest department carried out massive monoculture teak plantations on their lands without their consent and despite the opposition from the title holders. The forest department however claims that Burlabaru is a successful VSS project where forests are taken care of by communities. (<http://timesofindia.indiatimes.com/India/Odisha-tribals-lose-food-source-as-teak-plantations-deluge-their-forest-farms/articleshow/49038995.cms>)
See also recent "Petition_ Violation of Forest rights Act by Plantation & forestry Program_ 9th August 2015" by civil society actors in India. (http://fra.org.in/document/Petition_%20Violation%20of%20Forest%20rights%20Act%20by%20Plantation%20&%20forestry%20Program_%209th%20August%202015.pdf) Similarly the Particularly Vulnerable Tribal Groups' habitat rights, MFP rights, Community Forest Resource rights and any other traditional rights of many Particularly Vulnerable Tribal Groups get affected like for example the rights of Baigas affected by expanding tourism business of Kanha and Achanakmar Tiger reserves and their corridors.
6. See Ministry of Environment, Forest and Climate Change, "Guidelines for participation of private sector in afforestation of degraded forests" and <http://www.hindustantimes.com/india-news/govt-to-allow-pvt-sector-to-manage-40-of-forests/article1-1389622.aspx>
7. Not only India's obligations and commitments under these diverse agreements require India to secure the respective rights of its indigenous tribal communities but also even REDD + announces that the governments are required to comply with the relevant international conventions and agreements on biodiversity, rights of indigenous communities, etc.
8. International Covenant on Economic, Social and Cultural Rights, ICESCR, article 1(2) and UN Declaration on Rights of Indigenous Peoples UNDRIP, article 20
9. Supreme Court of India, Judgement on Niyamgiri 18.4.2013, section 42
10. Forest Rights Act, FRA, preface and sections 2 (c) & (o) and 3.1 (l)
11. UNEP/CBD/COP/DEC/XII/12, section B, Annex on "Plan of action on customary sustainable use of biological diversity", paragraph 6(b)
12. Convention on Biological Diversity, CBD, article 10 (c) and UNEP/CBD/COP/DEC/XI/3, Monitoring Progress in implementation of the Strategic Plan for Biodiversity 2011-2020 and the Aichi Biodiversity Targets, B. Development of indicators relevant to traditional knowledge and customary sustainable use, paragraphs 4-6
13. UNEP/CBD/COP/DEC/XII/5, paragraphs 10-11
14. UNEP/CBD/COP/DEC/XI/3, Monitoring Progress in implementation of the Strategic Plan for Biodiversity 2011-2020 and the Aichi Biodiversity Targets, section "B. Development of indicators relevant to traditional knowledge and customary sustainable use", paragraphs 5-6, see also ICCPR article 27 ja CCPR, General Comment 23, CCPR/C/21/Rev.1/Add.5, paragraphs 3.2 and 7, UNDRIP, article 26.2 and FAO Voluntary Tenure Guidelines 9.1-9.2, 9.4-9.8 & 10.3
15. UNEP/CBD/COP/DEC/XII/12, section (A), paragraph 9
16. UNEP/CBD/COP/DEC/XII/12, section "A Progress report on the implementation of the programme of work on Article 8(j) and related provisions and mechanisms to promote the effective participation of indigenous and local communities in the work of the Convention", paragraph 13
On traditional occupations, see also ILO Newsletter 2008 Indigenous and Tribal Peoples, Traditional Occupations, pages 3, 19-23 http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/publication/wcms_100547.pdf and E/C.19/2015/4, Study on the treatment of traditional knowledge in the framework of the United Nations Declaration on the Rights of Indigenous Peoples and the post-2015 development agenda, paragraphs 11 and 32, <http://daccess-ddsny.un.org/doc/UNDOC/GEN/N15/028/00/PDF/N1502800.pdf?OpenElement>
See also CEACR, 73rd Session, 2002, observation, Peru, para 7, Understanding the Indigenous and Tribal Peoples Convention, 1989 (No. 169) HANDBOOK, 2013 http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/publication/wcms_205225.pdf http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13100:0::NO::P13100_COMMENT_ID:3186816 , 111 Article 1(3) ja ILO 2014 Indigenous Peoples' Access to Decent Work and Social Protection, http://www.un.org/en/ga/president/68/pdf/wcip/IASG%20Thematic%20paper_%20Employment%20and%20Social%20Protection%20-%20rev1.pdf
17. Forest Rights Act, FRA, sections 2 (c) & (o) and 3.1(a)
18. A/RES/69/177, paragraphs 18-19
19. FAO International Treaty on Plant Genetic Resources for Food and Agriculture, FAO 2009, articles 2 and 5.1 d (see also 5.1. a, c & f, 6.1, 8 and 9.1 a)
20. FAO International Treaty on Plant Genetic Resources for Food and Agriculture, FAO 2009, articles 6.2 a-b
21. E/C.19/2012/8, UNPFII report "Study on shifting cultivation and the socio-cultural integrity of indigenous peoples" paragraphs 9 and 26 note for example:

"Ash is the main fertilizing agent, while certain species of fruit plants [...] and flowering plants [...] act as pesticides, covering crops with nitrogen-fixing qualities". "Rotational cropping ensures that land used for shifting cultivation regenerates quickly. The animals and birds that come to feed on the crops, roots, stems and flowers promote the pollination of flowers and the regeneration of trees from the seedlings and pollens they leave behind. Forested lands with high biological diversity nourish healthy grain, vegetable and fruit crops and boost the size of crop yields. It has also been noted that species diversity is usually richer in secondary forests than in stands of natural forests. In addition, lands used for shifting cultivation may regain lost fertility from the excreta and urine of animals and birds."

22. FAO International Treaty on Plant Genetic Resources for Food and Agriculture, 2009, articles 6.2, d-f

23. <http://indianexpress.com/article/india/india-others/dont-say-diversion-of-forest-land-say-reforestation-prakash-javadekar/>

24. World Forestry Congress 2015/ FAO, Durban Declaration

25. Report of the Special Rapporteur on the right to food, Olivier De Schutter A/HRC/25/57/Add.2 paragraph 67-68 and UNDRIP articles 26-27

26. UNDRIP, article 10

27. FRA, articles 3.1 (m), 4.1 (e) and 4.5, CESCR General Comments 4, 8 and 21 and Tribal Ministry of India:

<http://www.tribal.nic.in/WriteReadData/CMS/Documents/201303010546387158203File1539.pdf>

Note also that shifting cultivations are habitats where people also stay over night to protect their edible plants.

Note also that while vulnerable tribal people shall have "a secure and inalienable right" to their ancestral forest, even according to the government-set National Advisory Council they are "under threat of [...] displacement or relocation from their traditional territories in the name of economic advancement or wildlife conservation" whereas "in return they receive landlessness, impoverishment and long term degradation of the environment on which they wholly depend." (NAC Recommendations on PVTG development 2013, recommendation 5.2)

28. UN High Commissioner for Human Rights commented 9 August 2011 the issue of OMC and Vedanta corporations mining in Niyamgiri area in ancestral lands of particularly vulnerable Dongria tribal communities by noting that when such "communities are alienated from their lands" in the name of 'development' "such projects result in human rights violations involving forced evictions, displacement and even loss of life" and are "certainly not what we mean by development" as noted by UN High Commissioner for Human Rights in respect to India's particularly vulnerable tribal community.

(UN High Commissioner for Human Rights, 9 August 2011, "Let us ensure that development for some is not to the detriment of the human rights of others" on the International Day of the World's Indigenous People, 5 August 2011, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=11284&LangID=E>)

Also ILO and CERD have made similar comments on Niyamgiri case. UN Special Rapporteurs on human rights have noted the problems of Orissa state's minerals production policy also in another case of Posco company whose steel project threatened local communities' rights to adequate food, water, health, housing, means of subsistence and participation. (<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13805&LangID=E#sthash.1hpKy1gl.dpuf>)

As governments' "primary responsibility" is to secure the right to "development in which all human rights and fundamental freedoms can be fully realized", right to development is violated by any regress in realising economic or other human rights (UN General Assembly resolution 41/128.Declaration on the Right to Development preface and articles 1 & 3.1) No less so if a government prefers to call such violations 'development'. While "the current model of development is unequal, unstable and unsustainable" and continues to "undermine the realization of the full range of human rights for millions across the globe" (A/HRC/27/27 and A/69/36), such regress in safeguards of human rights and environment which undermines right to development is still however often presented as if it were 'development' which would justify the regress.

If India in the name of 'development' increasingly violates the right to development and other human rights in order to serve corporate profits, threatening to remove diverse legal safeguards of human rights and environment, it violates development that is a human right.

29. Supreme Court of India, Judgement on Niyamgiri 18.4.2013 on WRIT PETITION (CIVIL) NO. 180 OF 2011 Orissa Mining Corporation Ltd. Versus Ministry of Environment & Forest & Others

30. http://www.business-standard.com/article/current-affairs/odisha-wants-niyamgiri-gram-sabha-polls-again-115101500923_1.html and <http://www.thehindu.com/news/national/other-states/fra-being-violated-to-divert-forest-land-forvedanta-activist/article7771931.ece>

31. FRA sections 3(1) (e), (i) and (l) and FRA amendment rules 2012, rule 12 B

See also Supreme Court of India, Judgement (on Niyamgiri) 18.4.2013 on WRIT PETITION (CIVIL) NO. 180 OF 2011 Orissa Mining Corporation Ltd. Versus Ministry of Environment & Forest & Others , sections 47 and 55-59

Regarding Orissa government's views on changes of the mining project and of the task of the Gram Sabhas, see note 4 of the attached "ANNEX to Appeal to India and UN on indigenous forest rights" (pages 4-5)

32. Vedanta-Balco has carried out expansive bauxite mining and illegal displacement of vulnerable tribals in Chhattisgarh violating the rights of particularly vulnerable Baiga tribe at Daldali area of Kabirdham district and other vulnerable tribes at Mainpat area of Surguja district. In Daldali area of Kabirdham, the bauxite mines are located in the tiger corridor between Kanha-Bhoramdev and Achanakmar tiger reserves.

33. Pesa Act, articles 4 d-e

34. UNEP/CBD/COP/DEC/XII/12, section B, Annex on "Plan of action on customary sustainable use of biological diversity", paragraphs 6(f) and 9

36. FRA, section 3.1(i)

37. Forest Rights Act, FRA, sections 5 c-d

38. Nagoya Protocol, article 6.2

Community's consent has to be obtained thus also for the sanctuary's access to genetic resources. And where even mining and its heavy traffic roads are expanded in the sanctuary corridors, it "adversely affects the wild animals, forest and the biodiversity" which the communities have traditionally conserved. They have thus right "to regulate access to community forest resources and stop" mining and tourism industry there.

39. Forest Rights Act, FRA, section 5, FRA implementation rules 4.1 (e)-(f) and Ministry of Tribal Affairs circular on Community Forest Resource (CFR) guidelines (23rd April 2015).

40. UNEP/CBD/COP/DEC/XII/12, section B Annex on Plan of Action on Customary Sustainable Use of Biological Diversity; V. Elements of the first phase of the draft Plan of Action on Customary Sustainable Use of Biological Diversity, Tasks 1, 2 and 3 (i) reflecting CBD Hyderabad Conference of Parties (CoP) decision XI/14. Article 8(j) and related provisions, section F, paragraph 10 (c)

41. See note 3 of the attached "ANNEX to Appeal to India and UN on indigenous forest rights" (pages 3-4)